

(6) Visibility models have generally not been validated although major experimental efforts are underway to confirm theoretical predictions.

Despite these uncertainties, it is EPA's position that visibility models can and should, within their limitations, be used to evaluate source impacts. Modeling of certain source categories such as multistate and long-range transport are difficult at this time but modeling of major point sources and the control of obvious sources of plume blight are technically feasible. At the present time, modeling is still the best method for evaluation and determining the effect of control of visibility degrading air pollution.

Congress directed EPA to establish modeling requirements in Section 165(e). In Section 320, Congress directed EPA to hold a conference on modeling with particular attention to be directed to modeling impacts under the prevention of significant deterioration and the visibility programs. This conference was held on December 14 and 15, 1977 in Washington, D.C., and the transcript may be inspected at Central Docket Section (A-130), Docket No. A-79-40, Room 2903B, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

G. Plume Blight and Regional Haze. For discussion purposes, it is useful to categorize visibility impairment according to visual effect. The two general types of visibility impairment are plume blight and regional haze. Because they also occur on different scales of distance, it may be necessary to use different control approaches for each category.

Plume blight is defined as an identifiable, coherent plume which is observable against a background sky or other object. In many cases, the plume may be visually traced back to a single source.

Haze is a widespread reduction in visibility resulting from a polluted air mass, and frequently occurs on a scale of hundreds of miles and lingers for long periods of time. The haze may move over long distances and cause visibility impairment in areas which have few or no man-made emission sources, including mandatory class I areas. Many sources, including natural ones, from many areas contribute to the haze.

Compared to haze, plume blight is usually short-lived and local. It may be reasonable to consider a control approach for plume blight based on emission limitations for a single source, although control of regional haze may require regional emission limitations.

The recognition of the type of visibility impact a specific source or

group of sources will have is extremely important in the development of the visibility program. The program will need to provide sufficient flexibility to handle such technical problems as control of oxides of nitrogen, urban plumes, and regional haze within the confines of the Congressional mandate. Comment is therefore solicited on means by which such technical issues may be incorporated into the overall program.

H. Phased Program. EPA currently intends to implement a phased approach to visibility protection. EPA believes that regulations and guidelines, while encompassing the full range of Clean Air Act requirements, should to the extent possible permit States to focus initially on the most clearly defined cases of existing impairment and on strategies to prevent future impairment, and also allow for evolution of broader control strategies as scientific understanding of urban plumes, regional haze, control of non-major sources contributing to visibility impairment and other difficult matters improves.

I. Long-Term Strategies. In the initial phases of visibility protection, application of Best Available Retrofit Technology (BART) is likely to be limited to cases of plume blight or single source haze. The BART mechanism does not appear to apply to other important categories of visibility impairment such as prescribed burning, emissions from older sources, and urban plumes.

On the other hand, evaluation of new source impacts must focus on major stationary sources, particularly power plants. In addition, current PSD procedures for assessing new source impacts on visibility do not totally assess increases in emissions associated with population growth, such as increased urbanization, automotive emissions and space heating. Neither do they adequately control visibility impairment resulting from agricultural activities and highway construction.

Long-term strategies, because of limitations in the applicability of BART and PSD, will be central to making progress toward the national visibility goal. These strategies should provide for integration of visibility objectives into ongoing air management efforts to account for sources not adequately covered by other mechanisms, and explore innovative approaches for making cost effective progress toward visibility protection. Potential long-term control approaches which may prove desirable in the 1980's include an accelerated reduction in regional haze occurring in the Eastern United States, maintaining regional visibility levels in the Southwest and reducing impacts of forest and other burning in the Pacific

Northwest. Innovative regulatory strategies being considered are discussed in the Report to Congress referenced previously.

Comments are solicited on all aspects of the program, especially those discussed in this notice. Comments will be available for public inspection and copying at the Central Docket Section (No. A-79-40), Room 2903B, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

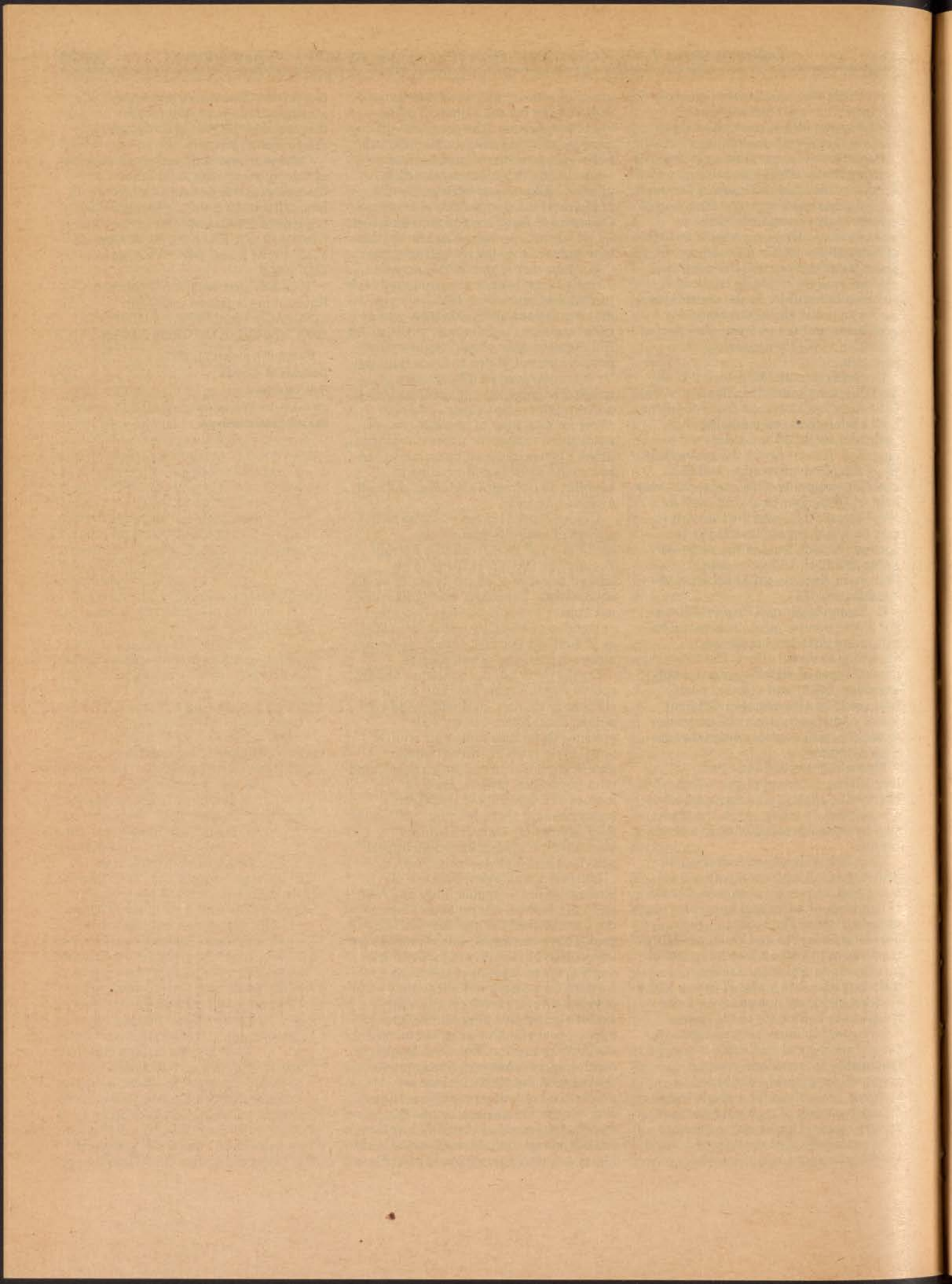
This Advance Notice of Proposed Rulemaking is issued under the authority granted in Sections 110, 165, 169A, and 301 of the Clean Air Act.

Dated: November 21, 1979.

Douglas M. Costle,
Administrator.

[FR Doc. 79-36718 Filed 11-29-79; 8:45 am]

BILLING CODE 6560-01-M



Environmental Protection Agency

Friday
November 30, 1979

Part IV

Environmental Protection Agency

Identification of Mandatory Class I
Federal Areas Where Visibility Is an
Important Value; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL1349-4; Docket No. OAQPS-79-09]

National Visibility Goal for Federal Class I Areas; Identification of Mandatory Class I Federal Areas Where Visibility Is an Important Value

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final action.

SUMMARY: Section 169A(a)(2) of the Clean Air Act requires EPA to promulgate, after consultation with the Secretary of the Department of the Interior (DOI), a list of mandatory class I Federal areas where visibility is an important value. On February 12, 1979 (44 FR 8909) the Environmental Protection Agency (EPA) proposed, after consultation with DOI, a list of mandatory class I Federal areas where visibility is an important value. EPA is today promulgating the proposed list without a change.

EFFECTIVE DATE: November 21, 1979.

ADDRESSES: This promulgation and background information relevant to it are available for public inspection during normal business hours at the EPA Central Docket Section (Docket No. OAQPS-79-09) Room 2903B, 401 M Street S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Johnnie L. Pearson, Standards Implementation Branch, Control Programs Development Division, Office of Air Quality Planning and Standards, Environmental Protection Agency (MD-15), Research Triangle Park, North Carolina 27711. Phone: (919) 541-5497.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act Amendments of 1977 added Section 169A to the Clean Air Act. In this Section, Congress established, as a national goal, "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution." Mandatory class I Federal areas are composed of all international parks, all national wilderness areas and memorial parks which exceed 5,000 acres in size and all national parks which exceed 6,000 acres in size. These areas must have been in existence on the date of enactment of

the 1977 amendments and may not be redesignated. There are 158 such areas.

An initial step in developing programs which make reasonable progress toward meeting this national goal is set out in Section 169A(a)(2), which requires that DOI, in consultation with other Federal Land Managers, review all mandatory class I Federal areas and identify those areas where visibility is an important value. EPA, after consulting with DOI, must promulgate a list of mandatory class I Federal areas in which it determines visibility is an important value.

On October 14, 1977 (42 FR 55280) DOI published notice seeking public comment on its preliminary determination that 153 of the 158 mandatory class I Federal areas possessed visibility as an important value. These 153 areas were identified by a task force, of which EPA was a consulting member, that created and applied the following criteria:

1. Does the legislation for the area indicate that scenic value was an important consideration for establishing the area? or,

Is the area possessed of scenic values that are important to public enjoyment?

2. Are scenic values of the area primarily in the form of panoramic background, intermediate or foreground views?

3. Do natural sources of visibility impairment seriously affect the ability of the public to appreciate visibility as an important value?

4. For those areas in which natural sources of visibility impairment seriously affect public appreciation of scenic values, is the magnitude of scenic value sufficient to warrant protection from man-caused sources?

The process by which the criteria was applied to each Federal mandatory class I area involved (1) the participation of the individual park superintendents and forest rangers who surveyed each area, and (2) a review of the park superintendents' and forest rangers' recommendations by the regional staffs responsible for the class I areas in their region and by the Washington, D.C. staff who consulted with the regional staffs. Through this consultation process, each of the 158 mandatory class I Federal areas was evaluated and tested against the criteria.

Review and analysis of public comments and DOI's preliminary findings produced one change in the criteria used to identify whether visibility is an important value. The Character of the Scenic Values (Step 3) used in the logic network for evaluating class I areas was changed so that only those areas which possess no sweeping

view of background features, panoramas, or views of middleground or background features would fail to be identified to possess visibility as an important value in this step. Under the preliminary criteria, an area was identified as not possessing visibility as an important value if views were primarily, or mostly, of foreground features less than one mile distant, although one of more background or middleground view or panorama was present. The one-mile cutoff is used because it is the shortest distance at which a broad perception of an area is possible, i.e., it allows an individual to observe overall patterns, shapes, and textures of the area. The one-mile cutoff is consistent with definitions of foreground, middleground, and background presented in the USDA, Forest Service Landscape Management Book, Volume I.

The application of the revised criteria identified three areas which possess visibility as an important value in addition to the 153 areas so identified in the preliminary findings. The three additional areas are: Mammoth Cave National Park, Kentucky; Moosehorn Wilderness, Maine; and Medicine Lake Wilderness, Montana. DOI published this final list of 156 areas on February 24, 1978 (43 FR 7721).

On February 12, 1979, EPA proposed to list these same 156 areas.

EPA Review

From the earliest stages of development, EPA followed DOI's progress in developing and applying the criteria by which the list of class I visibility protection areas was produced. EPA also reviewed the criteria and the comments obtained from public meetings conducted throughout the country. Finally, the workbooks, containing narratives provided by Federal Land Managers, were reviewed with particular attention paid to the logic behind the application of criteria to specific areas and the extensive public comment received. It is EPA's judgment that the Federal class I areas meeting visibility protection requirements as determined by DOI are correct. Therefore, EPA is promulgating the proposed list without any changes in designations. It should be noted, however, that the February 12, 1979 proposal of this action (44 FR 8909) contained an error. Although Minarets Wilderness in California was evaluated as having visibility as an important value, it was inadvertently omitted from the February 12, 1979 proposal and is properly listed in this promulgation. Since Minarets Wilderness was included on the twice published DOI list

of potentially eligible areas, and since EPA's proposal specifically mentioned the only two negative identifications on that list, EPA does not believe it is necessary to repropose Minarets Wilderness and as such promulgates it at this time.

Significant Comments

Both written comments and comments from the public hearings conducted by DOI were considered in this promulgation. The significant comments are discussed below.

Most speakers at the public hearings disagreed with the premise that a mandatory class I area could exist where visibility is not an important value. The commenters felt the intent of Congress and the national goal was to include all mandatory class I Federal areas in the visibility protection program.

EPA has found that visibility is an important value in 156 out of 158 mandatory class I areas. The two wildernesses which were shown not to have visibility as an important value (Rainbow Lake, Wisconsin and Bradwell Bay, Florida) did not meet the criteria established by DOI. In requiring an analysis of the visibility values in all mandatory class I Federal areas before determining whether visibility protection is necessary, Congress clearly did not necessarily intend that visibility be identified as an important value in all class I areas. See also H.R. Rep. No. 95-294, 95th Cong., 1st Sess. 205 (1977).

The greatest number of comment letters received pertained to the lack of information concerning the impact of listing an area as one where visibility is an important value. The commenters expressed concern over the extent of social and economic impacts on communities surrounding class I areas. Commenters felt that there was a need to evaluate more fully the impact of natural sources, investigate the existing air quality in and around class I areas, and list sources which may potentially be required to install Best Available Retrofit Technology (BART). Specifically, two commenters opposed the designations of Mount Zirkel Wilderness, Rawah Wilderness, and Rocky Mountain National Park as areas where visibility is an important value due to the uncertainty of how the designations would affect the local economy. In addition, groups in the Pacific Northwest protested the reduction or abolition of prescribed burning. One commenter expressed the same concern for forest products industries located near Cohutta

Wilderness, Okefenokee Swamp, and Wolf Island Wilderness.

As many commenters recognize, to assess, at the present time, the impact of a future regulatory program under Section 169A is neither possible nor required by law. In Section 169A Congress explicitly called for the listing of areas subject to regulation far in advance of the time when EPA must develop specific regulations for the States which contain guidelines and techniques for making reasonable progress towards the national goal. Congress revealed its sensitivity to the economic impact of any Section 169A regulations by making a cost and energy analysis part of the control technology standard and providing the possibility for exemption to that standard. However, there is no indication that economic impacts be somehow considered—in advance of the regulations themselves—in compiling the Section 169A(a)(2) list. A regulatory analysis is being prepared and these issues, along with those pertaining to prescribed burning, will be dealt with there. This analysis will also address the elements of economic impact set out in Section 317.

The second most mentioned comment was the subjective nature of the evaluation criteria. Two commenters felt key terms such as "important," "scenic value," "public appreciation," and "seriously affect" should have been defined prior to the evaluations. Other comments expressed concern over the dependence of the criteria upon highly variable human judgments, and felt a need to measure objectively the visibility of vistas from their associated viewpoints and incorporate such measurements into the evaluation.

While EPA acknowledges that in some respects the established criteria are subjective, it believes that the subjectiveness of these evaluations is to some extent inherent in the task of assigning "value" to the visibility of an area. Congress required DOI and EPA to accomplish this task in a very short time and did not anticipate that technical problems involved in objective measurements of visibility impairment would be solved before the task could be completed. Since a technical base broad enough to more quantitatively assess the class I area evaluations was not available in the time frame specified by Congress, criteria agreed on by EPA and DOI were developed which established certain priorities and were readily available for use by Federal Land Managers. Sections 165(d) and 169A which, among other things, charge Federal Land Managers with an

"affirmative responsibility" to protect visibility values, together show the great weight Congress intended the judgment of Federal Land Managers to have. A technical base for use in future regulations in response to Section 169A is now being established which will quantify and define many of the concerns mentioned above.

One commenter, noting that the effect of the listing will not be precisely known until the Section 169A regulations are proposed, suggested that promulgation of the final list be postponed until after the hearing on the proposed regulations and that the public record be left open during the interim. EPA believes such an approach would be contrary to the Congressional scheme—clearly set out in Section 169A—of promulgating the list of areas in advance, even of the report to Congress containing the technical outline for the eventual visibility regulations.

This does not mean, however, that future public comment and its consideration by EPA as to the specific visibility objectives, values, and important vistas of each area is precluded. EPA recognizes that the future rulemaking under Section 169A will require such additional area-specific analysis. At EPA's request, DOI and the Forest Service have conducted a preliminary analysis of the range of scenic vistas, the nature of visual values and a preliminary estimate of the degree of existing natural and man-made visibility impairment found in each area. EPA expects that the future proposal of visibility regulations will require States and Federal Land Managers to develop such additional area-specific assessments. Both this process, and the proposal itself, will be subject to public comment. To the extent that further comment and additional analysis (or anything else) affects the basis for the list, EPA will propose appropriate revisions.

Several comments asserted that Section 169A is limited to vistas *within* the boundaries of mandatory class I Federal areas, and, accordingly, that the EPA and DOI lists are defective because there is no indication that this alleged "jurisdictional limit" was observed by the persons engaged in the identification process. This observation overlooks DOI's specific discussion of this issue in its February 24, 1978, notice (43 FR 7721, 7724). DOI acknowledged the dispute as to whether vistas without the boundaries of the subject class I areas are protected, but noted that it need not reach the issue because the 156 mandatory class I Federal areas identified were based on views within

the areas seen from within the areas. The two areas not identified possessed no out-of-area vistas which would otherwise qualify them for the list.

EPA also recognizes that there is an issue as to the asserted "jurisdictional limits" of Section 169A. EPA is announcing its preliminary position and soliciting comments on a number of issues in the Advance Notice of Proposed Rulemaking published elsewhere in this Federal Register. For the purposes of this list under Section 169(a)(2), however, EPA has adopted DOI's approach and considered only vistas within an area as observed from a location within the same area. The two mandatory class I Federal areas identified as not possessing visibility as an important value do not have out-of-park vistas which, if considered, would warrant their listing.

Both written comments and those received from public hearings felt criterion 4 (for those areas in which natural sources of visibility impairment seriously affect public appreciation of scenic values, is the magnitude of the scenic value sufficient to warrant protection from man-made causes?) was vague. One written comment suggested the elimination of criterion 4, calling it "inappropriate and illogical." This commenter felt that controlling man-made sources when natural sources of impairment degrade the scenic value such that public enjoyment is diminished is not valid. On the other hand, comments obtained from the public hearings expressed the opinion that man-made pollution can significantly increase visibility impairment even when natural sources are present.

It is important to consider that while natural visibility impairment does exist in some class I areas, it will not only vary in magnitude, but also in duration. The criterion was established to recognize natural sources of impairment which may be of consequence, but it also allows areas with particularly significant scenic values protection from man-made impairment. While the magnitude and duration of natural impairment may be great, the imposition of man-made impairment can significantly reduce the visual appreciation of an area even though it is experiencing some form of natural visibility impairment. Therefore, EPA agrees with the comment that even in areas with substantial natural visibility impairment, important visibility values exist and can be enhanced by control of man-made sources of visibility impairment.

DOI public hearings received numerous comments on the importance

of nighttime sky viewing. Many commenters felt this should be included in the criteria to evaluate the importance of visibility to a class I area. EPA acknowledges that nighttime skies are an important part of the wilderness experience, especially to campers and backpackers. EPA feels that this aspect can be considered a visibility value for use in establishing visibility objectives by the Federal Land Managers. It is not considered, however, a major factor in distinguishing between class I areas or evaluating the importance of visibility in one class I area as opposed to another. Indeed, EPA received no written comments suggesting that the two areas excluded from the list promulgated today should have been included because of their nighttime skies.

Several comments received discussed individual wildernesses and reasons why they should or should not be included as areas warranting visibility protection. While most questions are answered in the evaluations of the workbooks, a few will be discussed here.

Although Brigantine Wilderness is used primarily for fishing and birdwatching, the scenic value of the wilderness cannot be separated from the total enjoyment of the park. Even though fishing is the primary attraction, the views one sees are part of the total experience which the public has come to enjoy. Therefore, visibility is an important value contributing to the total enjoyment of this area.

Breton Wilderness was another area for which one commenter urged deletion. In response to the comment that the area is not eligible because of size limitations, EPA has noted that DOI promulgated Breton at 5000 acres and it therefore meets the size requirements set by Congress. The comment also mentioned the poor maintenance of the area. Poor maintenance, however, is irrelevant to whether Congress intended visibility to be protected in the nation's wildlife areas. Breton Wilderness meets the requirements set forth in the criteria, and it is EPA's responsibility to acknowledge this and designate it as an area warranting visibility protection.

In the preliminary evaluation by the National Park Service, Mammoth Cave National Park was excluded from the list of areas having visibility as an important value. Evidence was presented at the public hearings which supported the inclusion of the park in the list. This evidence included legislative history which showed the surface area was a major consideration in the designation of Mammoth Cave as a national park and as a result this park was proposed by DOI and EPA.

Comment was also received concerning the independence of EPA's evaluation of class I areas under consideration for visibility protection. One commenter felt "EPA should not parrot DOI's list" and another commenter did not want EPA to "rubber stamp" DOI's designations. EPA has, however, conducted an independent and thorough evaluation of the workbooks submitted by the Federal Land Managers and has taken into consideration comments supplied at the public hearings held around the country.

Numerous other written and oral comments were received which concerned the upcoming regulations. These commenters did not object to the list, but were more concerned with the potential impact it would cause. These questions will be reviewed and discussed in the regulatory procedure under Sections 165 and 169A of the Clean Air Act.

This promulgation is issued under the authority granted in Sections 101(b)(1), 110, 169A(a)(2), and 301(a) of the Clean Air Act as amended (42 U.S.C. 7401(b), 7410, 7491(a)(2), 7601(a)).

Dated: November 21, 1979.

Douglas M. Costle,
Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended by adding Subpart D as follows:

Subpart D—Identification of Mandatory Class I Federal Areas Where Visibility is an Important Value

Sec.	Scope.
81.400	Alabama.
81.401	Alaska.
81.402	Arizona.
81.403	Arkansas.
81.404	California.
81.405	Colorado.
81.406	Florida.
81.407	Georgia.
81.408	Hawaii.
81.409	Idaho.
81.410	Kentucky.
81.411	Louisiana.
81.412	Maine.
81.413	Michigan.
81.414	Minnesota.
81.415	Missouri.
81.416	Montana.
81.417	Nevada.
81.418	New Hampshire.
81.419	New Jersey.
81.420	New Mexico.
81.421	North Carolina.
81.422	North Dakota.
81.423	Oklahoma.
81.424	Oregon.
81.425	South Carolina.

81.427	South Dakota.
81.428	Tennessee.
81.429	Texas.
81.430	Utah.
81.431	Vermont.
81.432	Virgin Islands.
81.433	Virginia.
81.434	Washington.
81.435	West Virginia.
81.436	Wyoming.
81.437	New Brunswick, Canada.

Authority.—Secs. 101(b)(1), 110, 169A(a)(2), and 301(a) of the Clean Air Act as amended (42 U.S.C. 7401(b), 7410, 7491(a)(2), 7601(a)).

Subpart D—Identification of Mandatory Class I Federal Areas Where Visibility Is an Important Value

§ 81.400 Scope.

Subpart D, §§ 81.401 through 81.437 lists those mandatory Federal Class I areas, established under the Clean Air Act Amendments of 1977, where the Administrator, in consultation with the Secretary of the Interior, has determined visibility to be an important value. The following listing of areas where visibility is an important value represents an evaluation of all international parks (IP), national wilderness areas (Wild) exceeding 5,000 acres, national memorial parks (NMP) exceeding 5,000 acres, and national parks (NP) exceeding 6,000 acres, in existence on August 7, 1977. Consultation by EPA with the Federal Land Managers involved: the Department of Interior (USDI), National Park Service (NPS), and Fish and Wildlife Service (FWS); and the Department of Agriculture (USDA), Forest Service (FS).

§ 81.401 Alabama.

Area name	Acreage	Public law establishing	Federal land manager
Sipsey Wild	12,646	93-622	USDA-FS

§ 81.402 Alaska.

Area name	Acreage	Public Law establishing	Federal land manager
Bering Sea Wild.....	41,113	91-622	USDI-FWS
Mount McKinley NP	1,949,493	64-353	USDI-NPS
Simeonof Wild	25,141	94-557	USDI-FWS
Tuxedni Wild	6,402	91-504	USDI-FWS

§ 81.403 Arizona.

Area name	Acreage	Public Law establishing	Federal land Manager
Chiricahua National Monument Wild.....	9,440	94-567	USDI-NPS
Chiricahua Wild.....	18,000	88-577	USDA-FS
Galiuro Wild.....	52,717	88-577	USDA-FS
Grand Canyon NP.....	1,176,913	65-277	USDI-NPS
Mazatzal Wild.....	205,137	88-577	USDA-FS
Mount Baldy Wild.....	6,975	91-504	USDA-FS
Petrified Forest NP.....	93,493	85-358	USDI-NPS

Area name	Acreage	Public Law establishing	Federal land Manager
Pine Mountain Wild	20,061	92-230	USDA-FS
Saguaro Wild	71,400	94-567	USDI-FS
Sierra Ancha Wild	20,850	88-577	USDA-FS
Superstition Wild	124,117	88-577	USDA-FS
Sycamore Canyon Wild	47,757	92-241	USDA-FS

§ 81.404 Arkansas.

Area name	Acreage	Public law establishing	Federal land manager
Caney Creek Wild	14,344	93-622	USDA-FS
Upper Buffalo Wild	9,912	93-622	USDA-FS

81.405. California.

Area name	Acreage	Public Law establishing	Federal land manager
Agua Tibia Wild.....	15,934	93-632	USDA-FS.
Caribou Wild.....	19,080	88-577	USDA-FS.
Cucamonga Wild.....	9,022	88-577	USDA-FS.
Desolation Wild.....	63,469	91-82	USDA-FS.
Dome Land Wild.....	62,206	88-577	USDA-FS.
Emigrant Wild.....	104,311	93-632	USDA-FS.
Hoover Wild.....	47,916	88-577	USDA-FS.
John Muir Wild.....	484,673	88-577	USDA-FS.
Joshua Tree Wild.....	429,690	94-567	USDI-NPS.
Kaiser Wild.....	22,500	94-577	USDA-FS.
Kings Canyon NP.....	459,994	76-424	USDI-NPS.
Lassen Volcanic NP.....	105,800	64-184	USDI-NPS.
Lava Beds Wild.....	28,640	92-493	USDI-NPS.
Marble Mountain Wild.....	213,743	88-577	USDA-FS.
Minarets Wild.....	109,484	88-577	USDA-FS.
Mokelumme Wild.....	50,400	88-577	USDA-FS.
Pinnacles Wild.....	12,952	94-567	USDI-NPS.
Point Reyes Wild.....	25,370	94-544	USDI-NPS.
Redwood NP.....	27,792	90-545	USDI-NPS.
San Gabriel Wild.....	36,137	90-318	USDA-FS.
San Geronio Wild.....	34,644	88-577	USDA-FS.
San Jacinto Wild.....	20,564	88-577	USDA-FS.
San Rafael Wild.....	142,722	90-271	USDA-FS.
Sequoia NP.....	386,642	26 Stat. 478 (51st Cong.)	USDI-NPS.
South Warner Wild.....	68,507	88-577	USDA-FS.
Thousand Lakes Wild.....	15,695	88-577	USDA-FS.
Ventana Wild.....	95,152	91-58	USDA-FS.
Yolla-Bolly-Middle-Eel Wild.....	109,091	88-577	USDA-FS.
Yosemite NP.....	759,172	58-49	USDI-NPS.

§ 81.406 Colorado.

Area name	Acreage	Public Law establishing	Federal land manager
Black Canyon of the Gunnison Wild.....	11,180	94-567	USDI-NPS.
Eagles Nest Wild.....	133,910	94-352	USDA-FS.
Fiat Tops Wild.....	235,230	94-146	USDA-FS.
Great Sand Dunes Wild.....	33,450	94-567	USDI-NPS.
La Garita Wild.....	48,486	88-577	USDA-FS.
Maroon Bells-Snowmass Wild.....	71,060	88-577	USDA-FS.

Area name	Acreage	Public Law establishing	Federal land manager
Mesa Verde NP.....	51,488	59-353	USDI-NPS.
Mount Zirkel Wild.....	72,472	88-577	USDA-FS.
Rawah Wild.....	26,674	88-577	USDA-FS.
Rocky Mountain NP.....	263,138	63-238	USDI-NPS.
Weminuche Wild.....	400,907	93-632	USDA-FS.
West Elk Wild.....	61,412	88-577	USDA-FS.

§ 81.407 Florida.

Area Name	Acreage	Public Law establishing	Federal land manager
Chassahowitzka Wild.....	23,360	94-557	USDI-FWS.
Everglades NP.....	1,397,429	73-267	USDI-NPS.
St. Marks Wild.....	17,745	93-632	USDI-FWS.

§ 81.408 Georgia.

Area Name	Acreage	Public Law Establishing	Federal Land Manager
Cohotta Wild	33,776	93-622	USDA-FS.
Okefenokee Wild.....	343,850	93-429	USDI-FWS.
Wolf Island Wild	5,126	93-632	USDI-FWS.

§ 81.409 Hawaii.

Area name	Acreage	Public law establishing	Federal land manager
Haleakala NP.....	27,208	87-744	USDI-NPS.
Hawaii Volcanoes.....	217,029	64-171	USDI-NPS.

§ 81.410 Idaho.

Area Name	Acreage	Public Law Establishing	Federal Land Manager
Craters of the Moon Wild.....	43,243	91-504	USDI-NPS.
Hells Canyon Wild *.....	83,800	94-199	USDA-FS.
Sawtooth Wild.....	216,383	92-400	USDA-FS.
Selway-Bitterroot Wild *.....	988,770	88-577	USDA-FS.
Yellowstone NP *.....	31,488	17 Stat. 32	USDI-NPS.

a Hells Canyon Wilderness, 192,700 acres overall, of which 108,900 acres are in Oregon and 83,800 acres are in Idaho.

b Selway Bitterroot Wilderness, 1,240,700 acres overall, of which 988,700 acres are in Idaho and 251,930 acres are in Montana.

c Yellowstone National Park, 2,219,737 acres overall, of which 2,020,625 acres are in Wyoming, 167,624 acres are in Montana, and 31,488 acres are in Idaho.

§ 81.411 Kentucky.

Area name	Acreage	Public law establishing	Federal land manager
Mammoth Cave NP.....	51,303	69-283	USDI-NPS.

§ 81.412 Louisiana.

Area name	Acreage	Public law establishing	Federal land manager
Breton Wild	5,000+	93-632	USDI-FWS.

§ 81.413 Maine.

Area name	Acreage	Public law establishing	Federal land manager
Acadia NP	37,503	85-278	USDI-NPS.
Moosehorn Wild	7,501		USDI-FWS.
(Edmunds Unit)	(2,782)	91-504	
(Baring Unit)	(4,719)	93-632	

§ 81.414 Michigan.

Area name	Acreage	Public law establishing	Federal land manager
Isle Royale NP	542,428	71-835	USDI-NPS.
Seney Wild	25,150	91-504	USDI-FWS.

§ 81.415 Minnesota.

Area name	Acreage	Public law establishing	Federal land manager
Boundary Waters Canoe Area Wild	747,840	99-577	USDA-FS.
Voyageurs NP	114,964	99-261	USDI-NPS.

§ 81.416 Missouri.

Area name	Acreage	Public Law establishing	Federal land manager
Hercules-Glades Wild ...	12,315	94-557	USDA-FS.
Mingo Wild	8,000	94-557	USDI-FWS.

§ 81.417 Montana.

Area name	Acreage	Public Law establishing	Federal land manager
Anaconda-Pintlar Wild.	157,803	88-577	USDA-FS.
Bob Marshall Wild.	950,000	88-577	USDA-FS.
Cabinet Mountains Wild.	94,272	88-577	USDA-FS.
Gates of the Mtn Wild.	28,562	88-577	USDA-FS.
Glacier NP	1,012,599	61-171	USDI-NPS.
Medicine Lake Wild.	11,366	94-557	USDI-FWS.
Mission Mountain Wild.	73,877	93-632	USDI-FS.
Red Rock Lakes Wild.	32,350	94-557	USDI-FWS.
Scapegoat Wild.	239,295	92-395	USDA-FS.
Selway-Bitterroot Wild *.	251,930	88-577	USDA-FS.
U. L. Bend Wild.	20,890	94-557	USDI-FWS.
Yellowstone NP *.	167,624	17 Stat. 32 (42nd Cong.).	USDI-NPS.

a Selway-Bitterroot Wilderness, 1,240,700 acres overall, of which 988,770 acres are in Idaho and 251,930 acres are in Montana.

b Yellowstone National Park, 2,219,737 acres overall, of which 2,020,625 acres are in Wyoming, 167,624 acres are in Montana, and 31,488 acres are in Idaho.

§ 81.418 Nevada.

Area name	Acreage	Public Law establishing	Federal land manager
Jarvis Wild	64,667	88-577	USDA-FS.

§ 81.419 New Hampshire.

Area name	Acreage	Public Law establishing	Federal land manager
Great Gulf Wild	5,552	88-577	USDA-FS.
Presidential Range-Dry River Wild	20,000	93-622	USDA-FS.

§ 81.420 New Jersey.

Area name	Acreage	Public Law establishing	Federal land manager
Brigantine Wild	6,603	93-632	USDI-FWS.

§ 81.421 New Mexico.

Area name	Acreage	Public Law establishing	Federal land manager
Bandelier Wild	23,267	94-567	USDI-NPS.
Bosque del Apache Wild	80,850	93-632	USDI-FWS.
Carlsbad Caverns NP ..	46,435	71-216	USDI-NPS.
Gila Wild	433,690	88-577	USDA-FS.
Pecos Wild	167,416	88-577	USDA-FS.
Salt Creek Wild	8,500	91-504	USDI-FWS.
San Pedro Parks Wild...	41,132	88-577	USDA-FS.
Wheeler Peak Wild	6,027	88-577	USDA-FS.
White Mountain Wild	31,171	88-577	USDA-FS.

§ 81.425 Oregon.

Area name	Acreage	Public law establishing	Federal land manager
Crater Lake NP	160,290	57-121	USDA-NPS.
Diamond Peak Wild	36,637	88-577	USDA-FS.
Eagle Cap Wild	293,476	88-577	USDA-FS.
Gearhart Mountain Wild	18,709	88-577	USDA-FS.
Hells Canyon Wild *.	108,900	94-199	USDA-FS.
Kalmiopsis Wild	76,900	88-577	USDA-FS.
Mountain Lakes Wild ...	23,071	88-577	USDA-FS.
Mount Hood Wild	14,160	88-577	USDA-FS.
Mount Jefferson Wild...	100,208	90-548	USDA-FS.
Mount Washington Wild	46,116	88-577	USDA-FS.
Strawberry Mountain Wild	33,003	88-577	USDA-FS.
Three Sisters Wild	199,902	88-577	USDA-FS.

a Hells Canyon Wilderness, 192,700 acres overall, of which 108,900 acres are in Oregon, and 83,800 acres are in Idaho.

§ 81.426 South Carolina.

Area name	Acreage	Public law establishing	Federal land manager
Cape Romain Wild	28,000	93-632	USDI-FWS.

§ 81.427 South Dakota.

Area name	Acreage	Public law establishing	Federal land manager
Badlands Wild	64,250	94-567	USDI-NPS.
Wind Cave NP	28,060	57-16	USDI-NPS.

§ 81.428 Tennessee.

Area name	Acreage	Public law establishing	Federal land manager
Great Smoky Mountains NP *	241,207	69-268	USDI-NPS.
Joyce Kilmer-Slickrock Wild *	3,832	93-622	USDA-NPS.

a Joyce Kilmer-Slickrock Wilderness, 14,033 acres overall, of which 10,201 acres are in North Carolina, and 3,832 acres are in Tennessee.

b Great Smoky Mountains National Park, 514,758 acres overall, of which 273,551 acres are in North Carolina, and 241,207 acres are in Tennessee.

§ 81.429 Texas.

Area name	Acreage	Public law establishing	Federal Land Manager
Big Bend NP	708,118	74-157	USDI-NPS.
Guadalupe Mountains NP	76,292	89-667	USDI-NPS.

§ 81.430 Utah.

Area name	Acreage	Public law establishing	Federal land manager
Arches NP	65,098	92-155	USDI-NPS.
Bryce Canyon NP	35,832	68-277	USDI-NPS.
Canyonlands NP	337,570	88-590	USDI-NPS.
Capitol Reef NP	221,896	92-507	USDI-NPS.
Zion NP	142,462	68-83	USDI-NPS.

§ 81.431 Vermont.

Area name	Acreage	Public law establishing	Federal land manager
Lye Brook Wild	12,430	93-622	USDA-FS.

§ 81.432 Virgin Islands.

Area name	Acreage	Public law establishing	Federal land manager
Virgin Islands NP	12,295	84-925	USDI-NPS.

§ 81.433 Virginia.

Area name	Acreage	Public law establishing	Federal land manager
James River Face Wild	8,703	93-622	USDA-FS.
Shenandoah NP	190,535	69-268	USDI-NPS.

§ 81.434 Washington.

Area name	Acreage	Public law establishing	Federal land manager
Alpine Lakes Wild.	303,508	94-357	USDA-FS.
Glacier Peak Wild.	464,258	88-577	USDA-FS.
Goat Rocks Wild.	82,680	88-577	USDA-FS.
Mount Adams Wild.	32,356	88-577	USDA-FS.
Mount Rainier NP.	235,239	30 Stat. 993 (55th Cong.).	USDI-NPS.

§ 81.424 Oklahoma.

Area name	Acreage	Public law establishing	Federal land manager
North Cascades NP	503,277	90-554	USDI-NPS.
Olympic NP	892,578	75-778	USDI-NPS.
Pasayten Wild.	505,524	90-544	USDA-FS.

Area Name	Acreage	Public law establishing	Federal land manager
Wichita Mountains Wild	8,900	91-504	USDI-FWS.

[FR Doc. 79-36712 Filed 11-29-79; 6:45 am]

BILLING CODE 6560-01-M

§ 81.435 West Virginia.

Area name	Acreage	Public law establishing	Federal land manager
Dolly Sods Wild	10,215	93-622	USDA-FS.
Otter Creek Wild	20,000	93-622	USDA-FS.

§ 81.436 Wyoming.

Area name	Acreage	Public law establishing	Federal land manager
Bridger Wild	392,160	88-577	USDA-FS.
Fitzpatrick Wild.	191,103	94-567	USDA-FS.
Grand Teton NP	305,504	81-787	USDI-NPS.
North Absaroka Wild.	351,104	88-577	USDA-FS.
Teton Wild	557,311	88-577	USDA-FS.
Washakie Wild	686,584	92-476	USDA-FS.
Yellowstone NP *	2,020,625	17 Stat. 32 (42nd Cong.).	USDI-NPS.

a Yellowstone National Park, 2,219,737 acres overall, of which 2,020,625 acres are in Wyoming, 167,624 acres are in Montana, and 31,488 acres are in Idaho.

§ 81.437 New Brunswick, Canada.

Area name	Acreage	Public law establishing	Federal land manager
Roosevelt Campobello International Park	2,721	88-363	Not applicable.

§ 81.422 North Carolina.

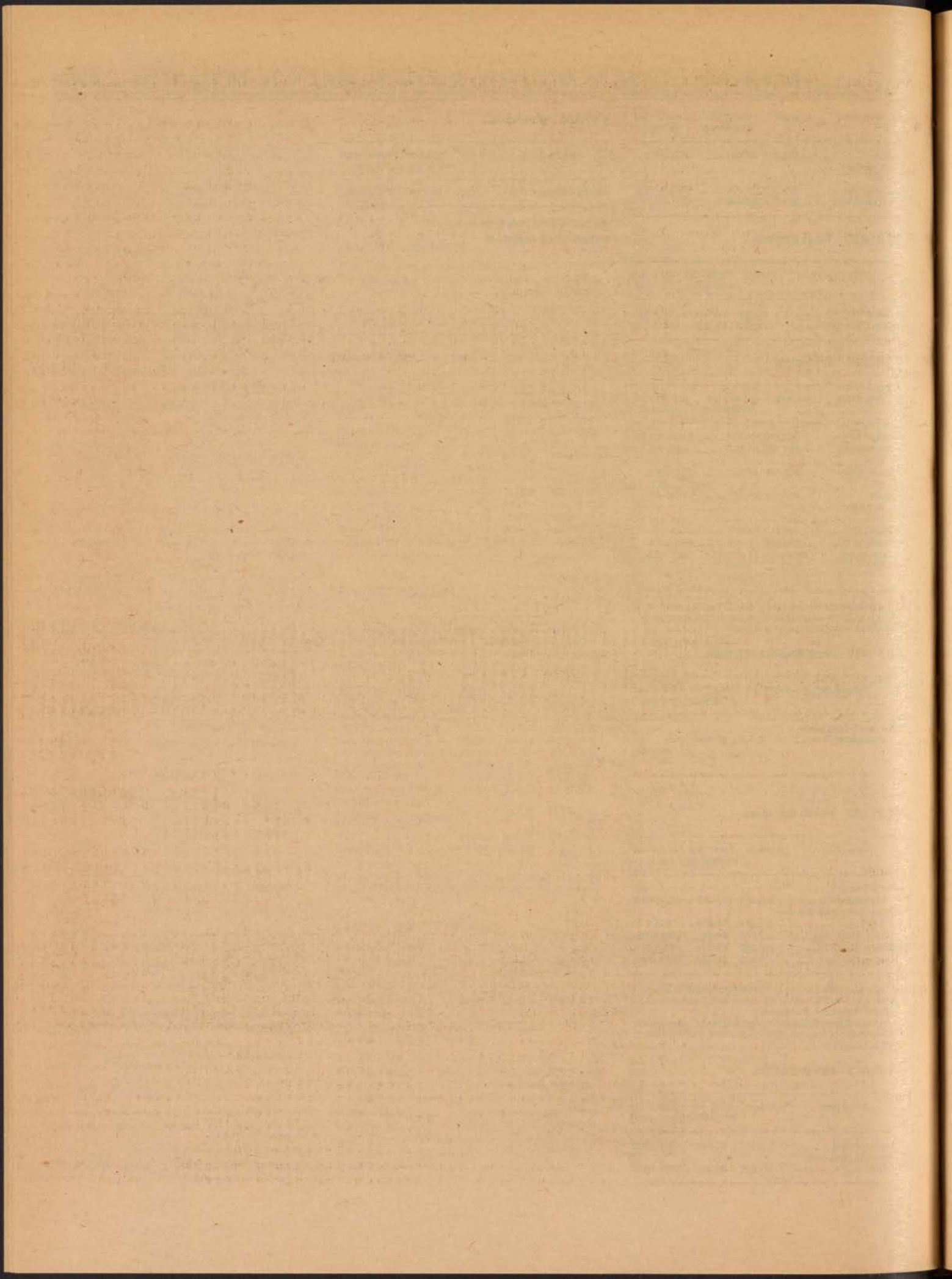
Area name	Acreage	Public law establishing	Federal land manager
Great Smoky Mountains NP *	273,551	69-268	USDI-NPS.
Joyce Kilmer-Slickrock Wild *	10,201	93-622	USDA-FS.
Linville Gorge Wild	7,575	88-577	USDA-FS.
Shining Rock Wild	13,350	88-577	USDA-FS.
Swanquarter Wild	9,000	94-557	USDI-FWS.

a Great Smoky Mountains National Park, 514,758 acres overall, of which 273,551 acres are in North Carolina, and 241,207 acres are in Tennessee.

b Joyce Kilmer-Slickrock Wilderness, 14,033 acres overall, of which 10,201 acres are in North Carolina, and 3,832 acres are in Tennessee.

§ 81.423 North Dakota.

Area Name	Acreage	Public law establishing	Federal land manager
Lostwood Wild	5,557	93-632	USDI-FWS.
Theodore Roosevelt NMP	69,675	80-38	USDI-NPS.



Registered Federal Land

Friday
November 30, 1979

Part V

Department of Agriculture

Farmers Home Administration

**Rural Rental Housing Loan Policies,
Procedures and Authorizations; Revision
and Redesignation**

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1822 and 1944

Rural Rental Housing Loan Policies,
Procedures, and Authorizations;
Revision—Redesignation

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration proposes to amend and redesignate its regulations concerning rural rental housing loans. The action is taken because of the general administrative restructuring of Agency regulations and restructuring of the Agency field staff. It is also taken to strengthen the Agency's mission of rural development and strengthen Agency efforts to assist distressed communities and rural areas which have significant populations of poor and disadvantaged persons. The action will clarify and update the regulations and will provide uniformity between the numbering of FmHA regulations and the Code of Federal Regulations.

DATES: Comments must be received on or before December 31, 1979.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence D. Hammond, Acting Director Rural Rental Housing Loan Division, Room 5331, South Agriculture Building, 14th and Independence SW., Washington, D.C. 20250, Telephone 202-447-7207.

SUPPLEMENTARY INFORMATION: This proposal revises Farmers Home Administration regulations under Chapter XVIII, Title 7 in the Code of Federal Regulations by revising and redesignating the present Subpart D "Rural Rental Housing Loan Policies, Procedures, and Authorizations" of Part 1822, to a new Subpart E "Rural Rental Housing Loan Policies, Procedures, and Authorizations" under Part 1944. The specific amendments contained in the proposed regulations are as follows:

1. Section 1944.213(a) is revised to equate the amount of the State Directors approval authority the amount of loan that can be approved on any one project

at any one time without the prior written concurrence of the National Office.

2. Section 1944.215(i)(1) is revised to require eligibility for occupancy to be determined based upon the combined incomes of all adult occupants.

3. Section 1944.215(i)(2) is added to clarify conditions under which the seemingly more temporary residents of the community may be considered eligible for occupancy.

4. Section 1944.215(1)(l) is revised to clarify that the borrower's initial investment in a project will not include any cash equity contribution which, when added to the loan amount, is in excess of the security value of the project.

5. Section 1944.231 is revised to: (a) Specify that while primary responsibility for loan making and servicing is in the Farmers Home Administration's District Office, County Offices may accept preapplications and assist applicants as needed; (b) specify the actions to be taken by the District Director; (c) specify the information necessary for submission to the National Office when review at the National Office level is either desired or required; (d) specify the priority criteria to be used in selecting preapplications for further processing; and (e) specify the conditions under which selected preapplications can be authorized for development into completed loan applications.

6. Section 1944.232(b) is revised to establish the District Director's responsibilities in application processing and review. It is also revised to permit the use of any processing check-list that may be developed to assist in application development and review.

7. Exhibit A-6 is revised to: (a) Permit the acceptance of a certificate of net worth in lieu of a financial statement from limited partnership; (b) require proposed general partners, stockholders, members, or beneficiaries to collectively possess sufficient cash or other liquid assets to meet any equity capital and initial operating capital requirements of applicant organization not yet in legal existence at the time the preapplication is submitted; (c) require a certification of truth and accuracy on all financial statements; (d) clarify the information necessary to pass the test for other credit; (e) require a written, dated, and signed statement disclosing any identity of interest between the applicant and others to be used in connection with the construction of the project; and (f) require the completion of Form FmHA 449-10, "Applicant's Environmental Impact Evaluation."

8. Exhibit A-7 is revised to: (a) Clarify the demand for the project which can help justify the size of the project and mix of units proposed; (b) require a copy of the proposed management agreement; (c) clarify the contents of an acceptable management plan; and (d) require a schedule of any separate changes for the use of non-shelter services to be provided in a congregate housing project.

9. Exhibit A-8 is added to clarify the use of Exhibits A-8A, A-8B, and A-8C.

10. Exhibit C, paragraph V C 1 is revised to be more definitive concerning the information necessary for National Office review of exception requests.

11. Exhibit C, paragraph VI is revised to permit borrowers to select tenants for congregate housing projects in accordance with selection criteria specified in their FmHA approved management plans.

12. Exhibit H is revised by combining seven former certifications into two new certifications (shown as Exhibits H-3 and H-7) to serve the same function.

13. Exhibits J through R are revised to enable the controlled disbursement of interim financing as well as the use of supervised bank accounts.

14. Numerous revisions are made to place responsibility for loan making and servicing in the hands of District Directors rather than County Supervisors.

15. Numerous revisions are made to eliminate any connotation of sexual bias.

16. Numerous editorial changes are made.

Accordingly, it is proposed to delete Subpart D of Part 1822 and add a new Subpart E of Part 1944 as follows:

PART 1822—RURAL HOUSING AND GRANTS

§§ 1822.81-1822.98 [Subpart E]—
[Deleted]

1. Part 1822 is amended by deleting Subpart D in its entirety.

2. Part 1944 is amended by adding a new Subpart E to read as set forth below:

PART 1944—HOUSING

Subparts A-C [Reserved]

* * * * *

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

Sec.
1944.201 General.
1944.202 Objectives.
1944.203-1944.204 [Reserved]
1944.205 Definitions.

Sec.
 1944.206-1944.210 [Reserved].
 1944.211 Eligibility requirements.
 1944.212 Loan purposes.
 1944.213 Limitations.
 1944.214 Rates and terms.
 1944.215 Special conditions.
 1944.216-1944.220 [Reserved].
 1944.221 Security.
 1944.222 Technical, legal, and other services.
 1944.223-1944.230 [Reserved].
 1944.231 Selecting and processing preapplications.
 1944.232 Preparation of completed loan docket.
 1944.233 Loan approval.
 1944.234 [Reserved].
 1944.235 Actions subsequent to loan approval.
 1944.236 Loan closing.
 1944.237 Subsequent RRH loans.
 1944.238 Coding loans as to initial or subsequent.
 1944.239 Complaints regarding discrimination in use and occupancy of RRH housing.
 1944.240 Exception authority.
 1944.241-1944.245 [Reserved].
 1944.246 Rural Cooperative Housing Loan Policies, Procedures, and Authorization [Reserved].
 1944.247 [Reserved].
 Exhibit A How to bring rental housing to your town.
 Exhibit A-1 Legal service agreement.
 Exhibit A-2 Survey of existing rental housing.
 Exhibit A-3 Rental housing survey.
 Exhibit A-4 Rental housing survey summary.
 Exhibit A-5 Statement of budget, income, and expense (excluding depreciation).
 Exhibit A-5A Housing allowances for utilities and other public services.
 Exhibit A-6 Information to be submitted with preapplication for rural rental housing (RRH) loan.
 Exhibit A-7 Information to be submitted with Application for Federal Assistance (short form).
 Exhibit A-8 Objective guides to assist management in determining the ability of tenants to sustain relative independence.
 Exhibit A-8A Physical self maintenance scale (PSMS).
 Exhibit A-8B Instrumental activities of daily living scale (IADL).
 Exhibit A-8C Index of independence in activities of daily living scale (ADL).
 Exhibit B Interest Credits on Insured RRH and RCH loans.
 Exhibit B-1 Example of Interest Credit determination for RRH or RCH projects (Plan II).
 Exhibit C Rental Assistance Program.
 Exhibit D Guide letter for use in Informing Interim Lender of FmHA's Commitment.
 Exhibit E Articles of Incorporation (Not for Profit).
 Exhibit F Bylaws.
 Exhibit G RRH Loans and the HUD Section 8 Housing Assistance Payments Program (Existing Units).
 Exhibit H RRH Loans and the HUD Section 8 Housing Assistance Payments Programs (New Construction).

~Exhibit H-1 Memorandum of Understanding on use of Section 8 of the United States Housing Act of 1937 and Section 515 of the Housing Act of 1949.
 Exhibit H-2 Section 8 Housing Assistance Payments program: Information Aid For New Construction.
 Exhibit H-3 Suggested Proposed Certification Format (Section 8/515 Program).
 Exhibit H-4 Equal Opportunity Site And Neighborhood Standards Checklist.
 Exhibit H-5 Certification by the applicant.
 Exhibit H-6 Guide letter for Architect's Certification.
 Exhibit H-7 Suggested Project Completion Certification Format (Section 8/515 program).
 Exhibit I Memorandum of Understanding Between Farmers Home Administration and Administration on Aging.
 Exhibit J Loan Resolution of —, 19— (RRH Loan to Broadly Based Nonprofit Corporation).
 Exhibit K Loan Resolution of —, 19— (RRH Insured Loan to Profit Type Corporation).
 Exhibit L Loan Resolution of —, 19— (RRH Loan to Profit Type Corporation Operating on a Limited Profit Basis).
 Exhibit M Loan Agreement (RRH Loan to a Limited Partnership).
 Exhibit N Loan Agreement (RRH Loan to a Limited Partnership Operating on a Limited Profit Basis).
 Exhibit O Loan Agreement (RRH Loan to a Partnership).
 Exhibit P Loan Agreement (RRH Loan to a Partnership Operating on a Limited Profit Basis).
 Exhibit Q Loan Agreement (RRH Insured loan to an individual).
 Exhibit R Loan Agreement (RRH Loan to an individual Operating on a limited Profit Basis).

Subparts F-J [Reserved]

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

§ 1944.201 General.

This subpart sets forth the policies and procedures and delegates authority for making Rural Rental Housing (RRH) loans under Sections 515 and 521 of the Housing Act of 1949.

§ 1944.202 Objectives.

The basic objective of RRH loans is to provide eligible occupants economically designed and constructed rental housing and related facilities suited for their living requirements.

§ 1944.203-1944.204 [Reserved]

§ 1944.205 Definitions.

(a) *Household*. (1) One or more persons who maintain or will maintain residency in one rental unit. Eligibility for occupancy is outlined in § 1944.215 (i).

(b) *Senior citizens or handicapped persons*. Any senior citizen provision in this Subpart will also apply to handicapped persons. The two terms are defined as follows:

(1) *Senior citizen*. A person 62 years of age or over and may be either the tenant or co-tenant. A person(s) younger than 62 years of age may reside with a senior citizen provided (i) the person is considered a member of the household of the senior citizen, or (ii) the person's occupancy can be shown to be necessary for the well being of the senior citizen. The term "senior citizen" also includes the elderly as used in this Subpart.

(2) *Handicapped person*. A person, or in the case of a household either the tenant or co-tenant, who does not need constant supervision or constant medical or nursing care, but meets either of the following qualifications:

(i) A person who has an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his or her ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions.

(ii) A person who is a developmentally disabled individual. A developmentally disabled individual is a handicapped person with a severe, chronic disability which: (A) is attributable to a mental or physical impairment or combination of mental and physical impairments; (B) is manifested before the person attains age twenty-two; (C) is likely to continue indefinitely; (D) results in substantial functional limitations in three or more of the following areas of major life activity: (1) self-care, (2) receptive and expressive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, and (7) economic sufficiency; and (E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(3) Senior citizens or handicapped persons will be considered eligible occupants without regard to income for projects not operated under interest credit Plan I or II.

(c) *Resident assistant.* A person(s) residing in the living unit who is essential to the well being and care of the senior citizen or handicapped person(s) and who is not related by blood, marriage, or operation of law to the senior citizen or handicapped person(s) residing in the unit and receiving supportive service(s).

(d) *Low or moderate income household.* Households having incomes within the limits of the maximum adjusted income as outlined in Exhibits C and D of Subpart A of Part 1822 of this Chapter (Farmers Home Administration (FmHA) Instruction 444.1).

(e) *Plan I and Plan II.* The two interest credit plans outlined in Exhibit B of this subpart.

(f) *Eligible occupants.* Eligible occupants in a project may be either the elderly, handicapped, or low and moderate-income persons, or any combination thereof as planned for the project and shown on the applicant's loan resolution or loan agreement. The term "occupant" also includes the tenant as used in this Subpart. The occupants must:

(1) For the purpose of a loan developed under this Subpart, generally be residents of the community who are generally capable of caring for themselves. However, in the case of congregate housing with supportive services, this may include elderly or handicapped persons who require some supervision and central services, but are otherwise able to care for themselves. All occupants, however, must meet the following criteria:

(i) Be independently able to vacate the unit for their own safety in emergency situations.

(ii) Be able to provide for their own sustenance in projects that provide less than full food service.

(iii) The occupant or legal guardian must possess the legal capacity to enter into a lease agreement.

(2) For a direct loan or a loan developed under Plan I, be:

(i) A senior citizen or handicapped person with a low or moderate income, or

(ii) Any household with a low income.

(3) For loans developed under Plan II, be persons with a low or moderate income.

(4) For all other loans be persons with a low or moderate income or senior citizens without regard to income.

(g) *Housing.* Structures in a rural area which are or will be suitable for, and available to, eligible occupants for dwelling use to provide congregate or completely independent living on a rental basis. The structures may include related facilities where appropriate.

(h) *Congregate housing.* Housing that affords an assisted independent living environment that offers the senior citizen or handicapped person who may be functionally impaired or socially deprived, but in good health (not acutely physically ill), the residential accommodations, central dining facilities, related facilities, and supporting service(s) required to achieve, maintain or return to a semi-independent life style and prevent premature or unnecessary institutionalization as they grow older. Congregate housing is also:

(1) Housing which has complete kitchen facilities in each unit. However, some or all of the units may have limited kitchen facilities, such as a cooktop with a small oven and a refrigerator. In the case of group living arrangements, each single person dwelling is considered a unit.

(2) A group living arrangement where one or more senior citizens or handicapped persons may share living space within a rental unit and in which a resident assistant is required. Such housing may be one or more single person dwellings or a multi-unit structure.

(i) *Related facilities.* Related facilities may consist of community rooms or buildings, cafeterias, dining halls, appropriate recreation facilities, and other essential service facilities such as central heat, sewerage, light systems, ranges and refrigerators, clothes washing machines and clothes dryers, and a safe domestic water supply. Under special conditions, such as a congregate housing project or a project housing handicapped tenants, space may be provided for cafeterias, dining areas, an infirmary, therapy room, special bathing room, and other special areas needed by the elderly and handicapped tenants when determined to be economically feasible. The cost of kitchen equipment such as stoves, ovens, steam tables and other such items may be included in the loan. However, the cost of specialized equipment such as that used for training and therapy will not be included in the RRH loan to equip these facilities. When ranges, refrigerators, dish washing machines, dish dryers and other kitchen equipment are included, they will be attached to the real estate in a manner to prevent easy removal.

(j) *Project.* A project is the total number of rental housing units to be built or to be purchased by one applicant in one market area at any one time. Subsequent loans may be made to complete the units started with the initial loan. Additional units or additional projects in the same market

area may be developed on a contiguous or separate tract of land at a later time if it can be shown that there is a need for this project in the market area and if the project already developed is operating successfully.

(k) *Development cost.* The cost of constructing, purchasing, improving, altering, or repairing housing and related facilities and the value or cost of purchasing and improving the necessary land. It includes necessary architectural, engineering, legal, and official fees and charges and other appropriate technical and professional fees and charges. For nonprofit organizations and State or local public agencies the development cost may include initial operating expenses up to 2 percent of the aforementioned costs. It does not include fees, charges or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitation of loans.

(l) *Rural area.* Open country or rural places as defined in § 1822.3(c) of Subpart A to Part 1822 of this chapter (paragraph III C of FmHA Instruction 444.1).

(m) *Individual.* A natural person.

(n) *Organization.* A private nonprofit corporation, profit corporation, consumer cooperative, association, State or local public agency, trust, partnership, or limited partnership.

(o) *Private nonprofit corporation.* A corporation which (1) is controlled by private persons or interests, (2) is organized and operated for purposes other than making gains or profits for the corporation or its members, (3) is legally precluded from distributing to its members any gains or profits during its existence, and (4) in the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a municipality corporation which will operate the housing for the same or similar purposes.

(p) *Profit corporation.* A corporation (1) which is controlled by private persons or interests, (2) whose organization permits the making of gains or profits for the corporation or its members, (3) which is authorized to do business in the state, and (4) which can legally carry out the purposes of the loan.

(q) *Consumer cooperative.* A corporation which (1) is organized as a cooperative, (2) will operate the housing on a nonprofit basis solely for the benefit of the occupants, and (3) is legally precluded from distributing, during the life of the loan, any gains or profits from operation of the housing. For this purpose any patronage refunds

to occupants of the housing would not be considered gains or profits. A consumer cooperative may accept nonmembers as well as members for occupancy of the housing.

(r) *Limited profit basis.* An individual or organization applicant who, in order to obtain interest credit assistance, will agree to limit the amount of profit to be obtained. Applicants operating on this basis will be permitted to receive a return on their initial investment in accordance with the requirements outlined in § 1944.215 (1). The applicant will legally obligate itself to regulate rents, charges, rate of return, and methods of operation.

(s) *Profit basis.* An individual or organization applicant who will operate the housing at rental rates low- and moderate-income persons, senior citizens and handicapped persons can afford.

(t) *Limited partnership.* a partnership consisting of (1) one or more general partners jointly and severally responsible as ordinary partners, and by whom the business is conducted, and (2) one or more special partners, contributing in cash payments a specific sum as capital to the common stock, and who are not liable for the debts of the partnership beyond the funds so contributed.

(u) *Owner-builder.* A qualified builder-applicant who is capable of, and will build, the RRH project.

(v) *Security value.* As used in this subpart, the security value means the present market value of the real estate offered as security for the loan as determined by the loan approval official less the unpaid principal balance plus past-due interest on any other liens against it. Other liens will include any prior liens and junior liens to be or likely to be taken or subordinated at or immediately after loan closing.

(w) *Gains or profits.* For the purpose of § 1944.205 (o) and (p), gains and profits do not include dividends payable on stock which is (1) nonvoting, (2) limited as to the amount of dividends that can be paid thereon, and (3) limited as to liquidation value in the event of corporate dissolution.

(x) *Members and membership.* These terms include stockholders and stock when appropriate.

(y) *Board and directors.* The governing body and members of the governing body of an organization.

(z) *Note.* This term also includes a bond or other form of obligation.

(aa) *Mortgage.* This term also includes any appropriate form of security instrument.

(bb) *Office of the General Counsel (OGC).* The Regional Attorney or the

attorney in charge who provides legal services to the FmHA for the particular State.

§§ 1944.206-1944.210 [Reserved]

§ 1944.211 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an RRH loan, the applicant must:

(1) Be either an individual who is a citizen of the United States, or an organization defined in § 1944.205(n) which will provide housing for eligible occupants as defined in § 1944.205(f).

(2) Be unable to provide the housing from its own resources and with the exception of a state and local public agency, be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that would enable the applicant to rent the units for amounts that are within the payment ability of eligible low- and moderate-income, senior citizen or handicapped occupants.

(i) For an individual, the assets of both the applicant and spouse will be considered.

(ii) For profit organizations, the assets of the individual members or stockholders will be considered.

(iii) For nonprofit organizations, the assets of the individual members will not be considered.

(iv) For a loan to provide congregate housing with central dining facilities or space for other services, provided by the RRH loan, the applicant must be able to (A) operate such facilities with its own funds other than rent, or (B) obtain such funding from other sources, or (C) lease such facilities to an individual organization or firm with the ability to operate the facilities. In the case of a lease, the payment to the borrower should be sufficient to cover the annual operating expenses, debt service, and reserve account attributable to the leased portion of the project. The cost of the food and other support services will not be reflected in the FmHA budget that shows the operation and maintenance cost of the housing project. This will not preclude tenants who voluntarily use the service from paying a separate charge for these services.

(3) Have the ability and intention to maintain and operate the housing for the purposes for which the loan is made. This is not intended to preclude the leasing of the housing in accordance with the Department of Housing and Urban Development (HUD) Section 23 leasing program.

(4) Own the housing and related land, or become the owner when the loan is closed. An owner may include, in

addition to the owner of full marketable title, a lessee of a tract of land owned by a State, political subdivision, public body or public agency, or Indian tribal lands which are not available for purchase. It may also include land when the State Director determines that long-term leasing of sites by nonpublic bodies is a well established practice and such leaseholds are fully marketable in the area, provided:

(i) The applicant is unable to obtain fee title to the property.

(ii) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.

(iii) The amount of the RRH loan against the property will not exceed the maximum security value determined in accordance with Part 1809 of this chapter, (FmHA Instructions 442.2 or 442.3 (available in any FmHA office) as appropriate).

(iv) The unexpired term of the lease on the date of loan approval is at least 25 percent longer than the repayment period of the loan and rental charged for the lease should not exceed the rate being paid for similar leases in the area.

(v) The borrower's interest may not be subject to summary foreclosure or cancellation.

(vi) The lease must:

(A) Not restrict the right to foreclose the RRH mortgage or to transfer the lease.

(B) Permit FmHA to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(C) Permit FmHA after acquiring the leasehold through foreclosure, or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property, or to sublet the property and to sell the leasehold for cash or credit.

(D) Permit the borrower, in the event of default or inability to continue with the lease and the RRH loan, to transfer the leasehold, subject to the RRH mortgage, to a transferee with assumption of the RRH debt.

(vii) The advice of OGC will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, the request should be submitted to the National Office for evaluation and instructions.

(5) Have or be able to obtain initial operating capital and other assets needed for a sound loan. RRH loans made to nonprofit organizations and to State or local public agencies may include up to 2 percent of the development cost for initial operating expenses.

(i) Initial operating capital should be sufficient to pay for such costs as property and liability insurance premiums, fidelity bond premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishing and equipment, printing lease forms, and other initial operating expenses. The initial operating capital required will be at least 2 percent of the total development cost of the project. It shall be deposited into the general fund account in accordance with the provisions of the Loan Agreement and Loan Resolution and will be used for such authorized purposes only.

(ii) When the applicant is to provide other movable equipment and furnishings, the initial capital will be increased sufficiently to cover the cost of these items.

(iii) In the case of congregate housing involving a group living arrangement, the applicant/borrower will not include in the budget items (Exhibit A-5, item 12) any salary, wages or expense items to compensate the resident assistant(s). Therefore, these expense items must be provided by other sources. However, this will not preclude the resident assistant for receiving compensation for any duties performed by a resident manager or caretaker in a typical RRH project.

(6) Possess the ability, experience, and the legal and financial capacity to incur and carry out the undertakings and obligations required for the loan.

(7) Agree to comply with all requirements of the FmHA such as those set forth in the loan resolutions, loan agreement, the form of note, the mortgage, and FmHA regulations.

(8) Necessary management will be provided to assure the successful operation of the project. Management services may be provided by the applicant, a management firm, or an agent. If the borrower or a member of the borrower organization does not live close enough to the project to provide the general supervision, a management firm or an individual located in close proximity who is experienced and has full authority to act on behalf of the owner must be retained. Generally, projects of more than 12 units should have a resident manager/contact person on the project site. Projects which are not large enough to justify a resident manager must, at a minimum, have an attractive sign in a conspicuous location providing the name, address, and telephone number of the local contact person able to speak on behalf of project management.

(9) In the case of a private nonprofit organization:

(i) If operating in one community and its trade area, meet the following additional requirements:

(A) Each member must be limited to one vote in the affairs of the organization.

(B) A majority of the members must reside in the community or the trade area where the housing will be located.

(C) The Board of Directors must not be less than 5, and must be selected by a procedure that insures that the interests of minorities and women are adequately represented.

(D) The directors must be members of the organization.

(E) Not less than five of the directors must be recognized as leaders in civic, governmental, fraternal, religious, and other community organizations of the community where the housing will be located.

(F) The organization must have and maintain a broadly-based membership representing or reflecting a variety of interest in the community. For a loan of less than \$100,000, the organization should have at least 25 members. The number of members should be increased for larger projects. Factors such as the prospect for competent management and supervisions and adequate community support of the housing project over the expected life of the loan, the present and future effective demand for the housing by persons who will be eligible for occupancy, and the ratio of the amount of the loan to the appraised value of the security are vitally important.

(G) The organization should adopt articles of incorporation and bylaws substantially conforming to the model articles and bylaws set forth in the appropriate FmHA Supplement. The State Director, with the assistance of OGC, will develop a model set of articles of incorporation and bylaws for the State which will be consistent with the provisions of Exhibits E and F, modified as appropriate in accordance with the State law.

(ii) If operating in more than one community or on a county or regional basis and providing or planning to provide rental housing in more than one community, meet the following requirements in addition to those in paragraph (a)(9)(i) of this section with the exception of § 1944.211(a)(9)(i)(B):

(A) The membership base should be representative of the area being served with at least 5 members representing a variety of interest from each community where the housing will be located. Each member must be limited to one vote in the affairs of the organization.

(B) The Board of Directors should be representative of each community or trade area where the housing is located.

(C) The total number of directors should not be less than 5 and the directors must be members of the organization.

(D) The organization's articles of incorporation and bylaws must include the requirements outlined in § 1944.211(a)(9)(ii) (A) and (B).

(10) In the case of a limited partnership:

(i) The general partners will be required to maintain a minimum of 5 percent financial interest in the organization.

(ii) The general partners must agree that new partners can be brought into the organization only with the consent of the Government as outlined in the loan agreement.

(b) *Authorized representative of applicant.* The FmHA will deal only with the applicant or a bona fide representative of the applicant and the representative's technical advisers. An authorized representative of the architectural or construction contracts, the purchase of a nonprofit applicant must have no pecuniary interest in the award equipment, or the purchase of the land for the housing site.

§ 1944.212 Loan purposes.

RRH loans may be made to qualified applicants to:

(a) Construct new housing.

(b) Purchase and rehabilitate existing housing only when major modifications, repairs, or improvements to the housing are necessary to meet the requirements of decent, safe, and sanitary living units. Loans will not be made for the purchase of adequate housing not in need of major rehabilitation. Major rehabilitation shall not be considered to be minor items of development work such as painting, cleaning, and improvements to related facilities.

(1) The structure to be rehabilitated must be physically and structurally sound enough to afford maximum safety (including fire safety) to the eventual residents of the structure after rehabilitation.

(2) Rehabilitation must be planned and accomplished so that the resulting housing will:

(i) Substantially meet the Minimum Property Standards (MPS) requirements for new construction.

(ii) Create a suitable and appealing living environment, and be substantially equivalent to new construction in quality, livability, design, and all other respects.

(iii) Have a total development cost equal to or less than that of new construction in the same area.

(3) Complete plans and specifications for rehabilitation will be provided for

review and approval. The plans, specifications, and other pertinent documents must be in sufficient detail to leave no question as to the work to be performed or the materials to be used.

(4) The rehabilitated project must generally meet the provisions of § 1944.215(a).

(5) When the downtown location of a rehabilitation project dictates such, a portion of the structure (such as part of the ground floor and basement) could be designated for commercial use on a lease basis. RRH loan funds, however, cannot be used to finance *any* cost associated with that commercial space. In order to determine the correct RRH loan amount for the residential development of such a structure, the following guidelines will apply:

(i) The applicant must supply a complete cost breakdown for purchasing and rehabilitating the entire structure into its joint residential/commercial use.

(ii) From the complete cost breakdown, the costs that can be easily and appropriately identified as being part of the commercial portion of the structure should be isolated as such, and likewise the costs easily and appropriately identified with the residential portion should be isolated.

(iii) The costs which cannot be easily and appropriately isolated (such as the cost associated with repair and renovation of a boiler, the value of the structure "as is," and certain mechanical or electrical components that will benefit both commercial and residential occupants) should be prorated between the two uses based upon the square footage floor space used in each of the two uses.

(iv) For the purposes of the loan limitations set forth in § 1944.213(a) (1) or (2), the term "development cost" shall mean the development costs associated with prorated to the residential use of the structure, and the term "security value" shall mean the security value of the project exclusive of the value contributed to the land and structure(s) by the commercial space. The capitalization approach to value is one means by which FmHA may establish the value contributed by the commercial space.

(v) The applicant must rely on other sources of financing for all costs associated with or prorated to the commercial space, given the FmHA security requirements of § 1944.221.

(6) The applicant may not lease any commercial space which may be permitted in a structure in accordance with § 1944.212(b)(5) without the prior written consent of the FmHA District Director. The advice of OGC will be obtained prior to loan closing as to any

modifications needed in the mortgage, loan agreement, or loan resolution to enforce this requirement. In addition, the FmHA District Director may not consent to any lease unless:

(i) The lease contains a provision by which the lessee agrees to vacate the premises should FmHA withdraw its consent to the lease.

(ii) The proposed use of the leased space has a symbiotic and mutually supportive relationship to the needs of the residential tenants and to the use of the residential portion of the structure as rental housing.

(iii) The terms of the lease and the proposed use of the leased space does not jeopardize the interests of the tenants of the project or the continued use of the residential portion of the structure for the purposes for which the loan is made.

(iv) The lease has been reviewed by OGC and found to be legally sufficient and in compliance with the requirements of this Subpart.

(c) Purchase and improve the necessary land on which the housing will be located.

(1) Loan funds used to purchase land may not exceed the present market value in its present condition. Present market value will be determined by a current FmHA appraisal in accordance with applicable FmHA regulations. Purchase price in excess of present market value will not be included in determining the applicant's initial investment.

(2) Loan funds will not be used to buy land from an applicant or a member of an applicant-organization, or from another organization in which any member of the applicant-organization has an interest. With prior approval of the State Director, however, loan funds may be used to buy land from a member of a broadly-based nonprofit applicant-organization.

(3) Loan funds may be used to acquire land in excess of that needed for the housing, including related facilities, when:

(i) The cost of the excess land is a reasonable portion of the loan.

(ii) The applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the land as soon as practicable and apply proceeds on the loan, and has legal authority to acquire and administer the land.

(d) Develop and install water supply, sewage disposal, streets, and heat and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legally assured right to use of the facility for at least the life of the loan and such title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the RRH project, or funds are limited to the prorated part of the total cost of the facility, according to the use and benefit to the project. The applicant will agree in writing to the application, as extra payments on the RRH loan, of any subsequent collection by the borrower from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(e) Develop other related facilities in connection with the housing such as:

(1) Maintenance workshop and storage facilities.

(2) Recreation center including lounge if the project is large enough to justify such a facility.

(3) Central cooking and dining facilities when the project is large enough to justify such services to supplement the kitchen facilities in each unit. All equipment purchased with the loan funds for the central cooking and dining facilities, such as stoves, refrigerators, ovens, dish washing machines and steam tables should be attached to the real estate in a manner to prevent easy removal. In determining whether to finance such facilities, the long-term availability of assistance from local organizations and other State or Federal agencies such as the Area Agency on Aging or the local office of the State Vocational Rehabilitation Agency or State developmental disabilities or mental health agency should be considered. Exhibit I of this Subpart is to be used as a guide in working with the Administration on Aging (AoA) and State agencies in providing support services. If needed in the community, FmHA may permit facilities in the project larger than that required solely by the tenants provided other sources of funds are available to pay a prorata share of the cost. Whenever such facilities are provided with loan funds, the following conditions must be met:

(i) The meals to be provided must be wholesome and economical. A minimum of one cooked meal per day, at least 5 days per week, must be provided. If tenants are charged for meals, such charges must be separate from their rental charges.

(ii) If the operator of the facility is the type of entity that is eligible to accept Food Stamps under the regulations of the Food and Nutrition Service (FNS) of

the USDA, such operator must be authorized by FNS to accept Food Stamps from the tenants for the purchase of meals.

(iii) The services to be provided and the fees to be charged (if any) for those services must be fully documented by a signed statement from the applicant, if it will provide the services, or in a lease agreement, if the services will be provided by others. Any lease agreement must be approved by the State Director or the loan approval official and contain the following statement:

This agreement shall not be effective unless and until approved by the State Director of the Farmers Home Administration, U.S. Department of Agriculture, or the State Director's delegated representative.

Farmers Home Administration

(Date) _____
By _____
(Title) _____

(4) Space for a small infirmary for emergency care only when justified.

(5) Laundry room and equipment.

(6) Appropriate recreational and other facilities to meet essential needs.

(f) Construct office and living quarters for the resident manager and other operating personnel if such facilities would be to the advantage of the project and the Government. The State Director should make a determination and the justification will be included in the docket.

(g) Construct fallout shelters or similar structures.

(h) Purchase and install ranges, refrigerators, drapes, drapery rods, clothes washers, and clothes dryers. Laundry facilities are required in all projects, and clothes washers and dryers should be provided in a central laundry room. Normally, about one washer and dryer should be provided for every 8 to 12 units in the project at a minimum. Clothes washers and clothes dryers may not be installed in individual rental units if the inclusion of such items in the individual units is not customary in the area for the size of project and type of housing involved. Whenever practical, this equipment should be attached to the real estate in a manner to prevent easy removal.

(i) Purchase and install essential equipment which upon installation becomes a part of the real estate. §§ 1944.205 (i) and 1944.213 (b) contain further guidance on the use of loan funds to purchase certain equipment.

(j) Provide landscaping, foundation planting, seeding or sodding of lawns, or other necessary facilities related to

buildings such as walks, yards, fences, parking areas, and driveways.

(k) Pay related costs such as fees and charges for legal, architectural, engineering and other appropriate technical and official services. Such fees and charges may be paid to an applicant or to an officer, director, trustee, stockholder, member, or agent of the applicant provided such fees and charges are reasonable and typical for that area and are earned. Ordinarily FmHA will furnish the needed guidance for the development of an RRH loan docket and project. However, the State Director may authorize the use of loan funds to enable a nonprofit corporation or consumer cooperative to pay a qualified consulting organization or foundation, operating on a nonprofit basis, charges for necessary services, provided the State Director determines that:

(1) Either (i) the applicant, with available FmHA assistance, cannot meet all requirements for a sound loan without the services, or (ii) the services would permit significant financial savings to the Government, either directly or by lightening the workload involved in processing applications, and

(2) The charges are reasonable in amount, considering (i) the amount and the purpose of the loan, (ii) the payment ability of the borrower, and (iii) the cost of similar services in the same or similar rural areas.

(l) Pay interest which will accrue on the RRH loan during the estimated construction period.

(m) Pay interest and other customary charges necessary to obtain interim financing.

(n) Pay initial operating expenses up to 2 percent of the development cost for nonprofit organizations and State and local public agencies.

(o) Purchase housing from an interim lender that holds free and clear title to an RRH project upon which construction commenced pursuant to § 1944.235(b)(1) and after issuance of a letter of commitment to the interim lender in accordance with this subpart, when all of the following conditions exist:

(1) The interim lender holds title to the property because the original RRH applicant for whom funds were obligated will not or cannot continue with the project after a letter such as that shown as Exhibit D to this Subpart was issued.

(2) The owner of the property is the interim lender to whom FmHA issued a letter such as that shown in Exhibit D to this Subpart for the construction of the project.

(3) The project is substantially complete, see § 1944.235(b)(1)(vi) all

work has to be satisfactorily completed in a workmanlike manner in accordance with the originally approved drawings, specifications, and contract documents, and is in compliance with Subparts A and D of Part 1804 of this chapter (FmHA Instructions 424.1 and 424.5).

(4) There are no unpaid obligations outstanding in connection with the project.

(5) All other requirements of this Subpart have been met.

(p) Purchase an RRH project in which the original applicant/borrower or the contractor has defaulted before the project is completed and in which a letter of commitment dated prior to July 26, 1978, was issued to an interim lender.

§ 1944.213 Limitations.

(a) *Loan limits.* For all applicants, the amount of the RRH loan or loans on each project at any one time will be limited to a maximum amount of the State Director's loan approval authority unless prior written concurrence and authorization to develop an application for a larger project is obtained in advance from the National Office. If the State Director recommends a larger project, the preapplication and detailed information on the need and market for the project will be submitted to the National Office with the State Director's specific recommendations before Form AD-622, "Notice of Preapplication Review Action," or any other notice is given to the applicant indicating that the loan can be made. Additional loans may be made on the same or contiguous site, without regard to this limitation provided the previous project is completed and the housing has been successfully operated for at least 12 months. A clear market demand must be evidenced for any additional units to be provided. Each loan will also be subject to the following additional requirements:

(1) For private nonprofit corporations, consumer cooperatives, State or local public agencies, and other nonprofit organizations, the amount of the RRH loan or loans will be limited to the development cost or the security value of each project, whichever is less.

(2) For all other applicants, the amount of the RRH loan or loans will be limited to more than 95 percent of the development cost or 95 percent of the security value of each project, whichever is less. The applicant's contribution must be in the form of either cash or land or a combination of both.

(b) *Limitations on use of loan funds.* Loans will not be made for:

(1) The purchase of a partially completed project except as provided in § 1944.212(p) or for the purchase of an

existing housing project unless the provisions of § 1944.212(b) or § 1944.212(o), as applicable, can be met.

(2) Housing or related facilities which are elaborate or extravagant in design or materials.

(3) Nursing or medical facilities other than a small emergency-care infirmary when justified by the size of the project and the fact that facilities for the emergency care expected to be needed by the occupants are not readily accessible elsewhere.

(4) Specialized equipment for training and therapy.

(5) Any commercial facilities except essential service-type facilities for use by the tenants when such facilities are not otherwise conveniently available in the area.

(6) Housing to be used primarily for serving temporary residents of the community, or to be used for any transient or hotel purposes. No rental term will be for less than 30 days.

(7) Nursing homes, special care facilities, or institutional-type homes. This limitation should not, however, preclude making loans for housing which is designed for occupancy by senior citizens or handicapped persons who are capable of caring for themselves, but will not live on a totally independent basis because of a need for some supervision and central services. Loan funds will not be used to finance these support services.

(8) Operating capital for a central dining facility or any items which do not become affixed to the real estate security, such as special portable equipment, furnishing, kitchen ware, dining ware, eating utensils, movable tables and chairs, etc.

(9) Any facility not essential to the needs of the tenants.

(10) Refinancing debts of the applicant except:

(i) As authorized in § 1944.213(c) and § 1944.235(b)(1), or

(ii) When a nonprofit organization or a State or local public agency applicant already owns land on which a lien has existed for more than 5 years before the date of the application, a subordination or release cannot be obtained, and the applicant does not have the financial resources necessary to obtain a release of the existing lien(s). In this situation, loan funds may be used to obtain a release of the land needed for the site of the proposed project. The amount of funds used for such purposes shall be limited to the amount necessary to obtain the release and, in any case, shall not exceed the "as is" value of the land as determined in accordance with FmHA Instruction 422.3, (available in any FmHA Office).

(11) Housing which the applicant plans to sell in the near future.

(12) Housing which the applicant plans to lease to another operator except as provided in § 1944.211(a)(3) for leases to public housing authorities.

(13) Payment for any fee, charge, or commission to any broker, negotiator, or other person for the referral of a prospective applicant or solicitation of a loan.

(14) Payment of any fee, salary, commission, profit, or compensation to an applicant, or to any officer, director, trustee, stockholder, member, or agency of an applicant, except as provided in §§ 1944.212(c)(2)(k) and 1944.222(d).

(15) Land which the applicant or a member of an applicant-organization, or from any other organization in which any member of the applicant-organization has an interest, except as authorized in § 1944.212(c)(2).

(c) *Obligations incurred before loan closing.* When an applicant files an application for a loan, the County Supervisor or District Director, as appropriate, will advise the applicant not to start construction or incur any indebtedness until the loan is closed, with the exception of those cases involving interim financing, and then the guidelines outlined in § 1944.235(b)(1) will apply. If, nevertheless, the applicant incurs debts for work, materials, land purchase, or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay such debts when the State Director finds that all of the following conditions exist:

(1) The debts were incurred: (i) After the applicant filed a written application for a loan with FmHA; or (ii) after the submission of a preliminary proposal to HUD in the case of a project involving the Section 8 Housing Assistance Payments program with a loan made in compliance with this Subpart; or (iii) prior to the date of application as part of a predevelopment loan specifically intended as temporary financing from a public agency or nonprofit organization and prior concurrence of the National Office is obtained; or (iv) prior to the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and prior concurrence of the National Office is obtained.

(2) The applicant is unable to pay such debts from the applicant's own resources or to obtain credit from other sources, and failure to authorize the use of loan funds to pay such debts would impair the applicant's financial position.

(3) The debts were incurred for authorized loan purposes.

(4) Contracts, materials, construction, and any land purchased meet FmHA standards and requirements.

(5) Payment on the debts will remove any liens which have attached, and any basis for liens that may attach, to the property on account of such debts.

§ 1944.214 Rates and terms.

(a) *Interest.* Loans will be made at interest rates specified in Exhibit B to FmHA Instruction 440.1 (available in any FmHA office).

(b) *Amortized period.* Each loan will be scheduled for payment within such period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security. The payment period will not exceed 50 years from the date of the note.

§ 1944.215 Special conditions.

(a) *Type of housing.* All housing must meet the following requirements:

(1) Be economical in construction and not of elaborate or extravagant design or materials. As a general rule, the square footage living area of new rental units and related facilities to be constructed with RRH loan funds should be within the guidelines listed below.

Type of Unit and Maximum Living Area

1-Bedroom Units, 570-700 sq. ft.
2-Bedroom Units, 700-850 sq. ft.
3-Bedroom Units, 850-1020 sq. ft.
4-Bedroom Units, 1020-1200 sq. ft.

(i) An additional 100-120 square feet of living area may be added to the 4-bedroom unit guideline for each bedroom in excess of 4.

(ii) In townhouse units where living is on two floor levels of the rental unit, the maximum square footage of living area may be exceeded by up to 12 percent, but only to the extent necessary to accommodate interior stairways.

(iii) Room sizes must be in compliance with the HUD MPS 4910.1. Minimum room sizes may be determined by the minimum areas and least dimensions listed in the MPS or on a required furnishing basis.

(iv) When community rooms or buildings are provided as part of the related facilities, their gross square footage area should be within the guidelines set forth in the HUD Manual of Acceptable Practices (MAP) 4930.1.

(2) As a general rule, consist of multi-unit type housing with two or more person units and any appropriate related facilities. However, in some congregate housing cases, single household dwellings may provide for a group living arrangements, if the senior citizen or handicapped persons' need cannot be met in multi-unit structures.

Such group-type single household dwellings, if financed, must meet the following requirements:

(i) Consist of single household dwellings that can be easily converted to a rental or homeownership unit for a family in the event the need for such housing by senior citizens or handicapped persons ceases.

(ii) The applicant must show that adequate support services needed by the tenants will be available on a continuous long range basis. As a general rule the support services must be provided by a State or local public agency. However, a nonprofit organization with a good track record and an ongoing program may be considered capable of providing these support services.

(iii) The senior citizen or handicapped person(s) to be housed must be capable of caring for themselves except for some supervision and support services.

(3) Be residential in character and be designed to meet the needs of eligible occupants. Generally, RRH units not be more than two-story structures. However, in some cases, especially those projects designed for occupancy by senior citizens or handicapped persons, low-rise structures with elevators can be considered on an individual case-by-case basis, with prior written authorization from the National Office, when the following conditions exist:

(i) There is a serious shortage of suitable building sites, and the number of units needed cannot be built due to lack of space on the site and other buildings sites are not available.

(ii) Land costs are such that one- or two-story construction would result in a unit cost and rental rates in excess of what eligible occupants can afford.

(iii) The number of stories proposed for the rural rental housing structure is compatible with other rental structures in the community. If there are no other low-rise rental structures in the community, the proposed structure must be in character with surrounding structures and the applicant's market survey report, submitted in accordance with Exhibit A-7 of this subpart, must identify market acceptability for the number and type of low-rise rental units proposed.

(iv) The cost of the units should compare favorably with one- and two-story construction financed with RRH loans. If the costs are higher, the loan will not be approved until the FmHA State Architect or Engineer has reviewed the plans, specifications, and cost data to assure that further cost savings cannot be achieved without

sacrificing the quality and serviceability of the housing.

(v) Elevators will be provided in accordance with the HUD MPS 4910.1. If elevators are included, the subsoil conditions of the site must be adequate for the installation of hydraulic elevators and sufficient service personnel must be available in the area for service and repair work.

(4) Consideration must be given to safety, convenience, and comfort of the prospective tenants.

(5) Based on the demand shown by a market analysis, it may include "efficiency" type, one, two, three or more bedroom units.

(6) Contain bathroom and kitchen facilities in each unit. In the case of group living arrangements, each single household dwelling is considered a unit. Congregate housing projects with central dining facilities may have somewhat limited kitchen facilities, but must contain as a minimum, a cooktop, a refrigerator, and a small oven in each unit. The kitchen facilities in a single household dwelling for a congregate housing group living arrangement may be designated to meet the special needs of the tenants.

(7) All units in projects to be constructed will be individually metered for utilities unless adequate justification is provided to show that it would be infeasible or excessively costly.

(8) Be designed to provide for the greatest energy conservation and promote the concept of modest housing and yet provide a highly desirable and attractive environment for the tenants.

(b) *Determination of per unit rental rates for group living arrangements.* To determine the amount of rental payment to be collected per unit for congregate housing involving a group living arrangement (and only for this particular determination), the total annual cost to operate the facility (the sum of items 12 and 20 of Exhibit A-5) will be divided by the total number of units (bedrooms) to be occupied by the tenant(s). [If the project also includes conventional rental apartment units (1, 2, 3, etc. bedroom units), each of these units (not bedrooms) will be added to the number of units (bedrooms) contained in the housing involving group living arrangement, and the total number of units divided into the sum of items 12 and 20.] In the case of congregate housing involving a group living arrangement, each bedroom will be counted as if it were one rental unit. However, the bedroom occupied by the resident assistant will be excluded and will not be counted in making the determination of rental payment to be charged to all the other bedrooms

occupied by the tenant(s). Once this charge per unit has been calculated, the rental payment by the tenant(s) will be determined in the usual manner.

(c) *Deferred principal payments.* (1) When necessary and advisable, principal payments may be deferred for the first full year or the first full two years after loan closing. Payments of accrued interest cannot be deferred.

(i) When interim financing is used, it should not be necessary to defer principal payments.

(ii) When multiple advances are used, principal payments should not be deferred beyond the first annual anniversary date of the note following the anticipated date of construction completion, since payments are deferred only to permit the project to be completed.

(2) Monthly payments of accrued interest should be implemented beginning the month construction is completed. However, if the project is not completed by the date of the interest only payment(s) as shown on the note, the note date(s) will determine the time of the interest only payment. [See Forms Manual Insert (FMI) for Form FmHA 440-16, "Promissory Note," available at any FmHA Office, for the payment schedule.]

(d) *Refinancing RRH loans.* Each borrower must agree to refinance the unpaid balance of the RRH loan at the request of the FmHA whenever it appears to FmHA that the borrower is able to obtain a loan from responsible cooperative or private credit sources at rates and terms which the FmHA considers reasonable, and still rent the units to eligible occupants at rental rates within their payment ability.

(e) *Loan resolution or loan agreement.* A loan resolution or loan agreement provides for the maintenance of certain accounts and the pledge of housing income as security. It contains regulatory provisions governing and giving the FmHA power to impose requirements regarding the housing and related operations of the applicant. The form of loan resolution or loan agreement contains provisions of policy and procedure which should be carefully read and fully understood by the applicant. This is particularly important for applicants operating on a limited profit basis. If any provisions are not appropriate to a particular case, proposed substitute language will be approved by FmHA and OGC. Forms of loan resolutions and loan agreements are contained as Exhibits to this Subpart and will be executed as follows:

(1) Exhibit J will be used by all nonprofit organizations and for state or local public agencies.

(2) Exhibit K will be used by profit type corporations.

(3) Exhibit L will be used by profit type corporations operating on a limited profit basis.

(4) Exhibit M will be used by limited partnerships operating on a profit motivated basis.

(5) Exhibit N will be used by limited partnerships operating on a limited profit basis.

(6) Exhibit O will be used by a partnership operating on a profit motivated basis.

(7) Exhibit P will be used by a partnership operating on a limited profit basis.

(8) Exhibit Q will be used by an individual operating on a profit motivated basis.

(9) Exhibit R will be used by an individual operating on a limited profit basis.

(f) *Multiple advances.* Loan funds will be disbursed in accordance with the provisions outlined in § 1944.235.

(g) *Interest credits and rental assistance.* (1) Borrowers may receive interest credits provided they meet the requirements outlined in Exhibit B of this Subpart.

(2) Rental assistance may be provided to eligible tenants in eligible projects in accordance with Exhibit C of this Subpart.

(h) *Nondiscrimination in use and occupancy.* The borrower will not discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, sex, marital status, or national origin, and will comply with Subpart E of Part 1901 of this chapter.

(i) *Eligibility for occupancy.* Loans will be made on the basis of the housing being occupied by eligible occupants as defined in § 1944.205 (d) and (f). The following policies will apply:

(1) When a family consists of only one person, an additional person or persons may reside in the unit provided the unit has adequate space for their total needs and provided the combined incomes of the occupants does not exceed the levels set for the Project in accordance with § 1944.205 (f) and as defined in Exhibits C and D of Subpart A to Part 1822 of this Chapter, (FmHA Instruction 444.1). A resident assistant may occupy living space in a congregate housing group living arrangement without regard to income. In cases involving deceased senior citizens or handicapped tenants, only the surviving member(s) of the household of the deceased senior citizen or handicapped person who was living in the unit under the above stated guidelines with the deceased senior

citizen or handicapped person at the time of his or her death may continue to occupy the rental unit as a tenant. The surviving household member(s) must meet all the eligibility requirements for occupancy except that of being a senior citizen or a handicapped person. If the borrower receives interest credits, the rent paid for the unit will be based on the combined incomes of the occupants.

(2) Although the purpose of the program is to provide adequate housing for the eligible permanent residents of the community, a student or other seemingly temporary resident of the community who is otherwise eligible and seeks occupancy in a project may be considered an eligible tenant if all of the following conditions are met:

(i) The person seeking occupancy is either of legal age in accordance with applicable State law or is otherwise legally able to enter into a binding contract under State law.

(ii) The person seeking occupancy has established a household separate and distinct from the person's parents or legal guardians.

(iii) The person seeking occupancy is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence is provided to this effect.

(iv) The person seeking occupancy signs a written statement indicating whether or not the person's parents, legal guardians, or others provide any financial assistance and such financial assistance is considered as part of current annual income and is verified in writing by the borrower.

(3) Ineligible persons may occupy the housing for temporary periods in order to protect the interest of the Government in accordance with Exhibit B of this subpart.

(4) For housing projects financed with RRH loans and limited to occupancy by eligible senior citizens or handicapped tenants, the State Director is authorized to permit the borrower to rent units to other eligible low- and moderate-income families and persons, provided such units will be rented on a temporary basis and only until they can be rented to eligible senior citizens or handicapped persons.

(5) Congregate housing projects which involve a group living arrangement may limit occupancy to eligible developmentally disabled individuals. This limitation will be outlined in the applicant/borrower's management plan.

(6) In congregate housing projects, including those involving group living arrangements, a further critical dimension is added by the selection and placement of tenants. This involves a

determination concerning the ability of a tenant with a functional impairment to sustain relative independence, given the supportive service(s) provided. While this determination can be made by the project management, it is recommended that it be made by a professionally qualified tenant selection committee, and the decision presented to the project management for acceptance or rejection. This determination can be made in a highly technical fashion using scientifically developed scales of competence in the activities of daily living, or it can be made through social or medical sources. The functional impairments of tenants should be verified by one of the following methods.

(i) Certification by a physician, or State or local agency responsible for supportive services to the tenant as to the tenant's ability to remain independent with an assist from service(s).

(ii) By the use of any objective guide, such as the following three objective guides which are further explained in Exhibit A-8 of this Subpart:

(A) The Physical Self Maintenance Scale (Exhibit A-8A) may be used to measure a person's capacity for personal care.

(B) The Instrumental Activities of Daily Living Scale (Exhibit A-8B) may be used to measure a person's capacity for continued living in the project.

(C) The Index of Independence in Activities of Daily Living (Exhibit A-8C) may be used to measure the relationship of functional capacity to the accomplishment of daily activities, such as bathing, dressing, toilet performance, transferring (from prone to upright position and back again) continence, and eating.

(j) *Tenant certification.* Initial certification and recertifications will be executed on Form FmHA 444-8, "Tenant Certification," as follows:

(1) Initial certification will be executed for each household when it initially occupies the housing. Borrowers will promptly provide the District Director with an executed copy of these forms.

(2) Recertification will be completed by having a new Form FmHA 444-8 executed at least annually by each tenant. The certification forms will be obtained by the borrower and a copy provided to the District Director to verify continued tenant eligibility and the amount of interest credit or rental assistance given to the borrower.

(3) The incomes reported by all tenants must be verified by the borrower. Such verification may be obtained by:

(i) Using Form FmHA 410-5, "Request for Verification of Employment," or verification forms prepared by the borrower or other sources. Until Form FmHA 410-5 is revised, it may be modified by deleting "to the Farmers Home Administration" in the last sentence of the Instructions; deleting "Farmers Home Administration" in Part I, item 2 and inserting the name and address of the borrower or management agent to whom the form is to be returned; deleting "applied for a Farmers Home Administration loan and" in the first sentence and the word "loan" in the second sentence of the applicant's statement in Part I; and by deleting the complete last sentence below the employer's signature.

(ii) In the case of the elderly or other persons whose income is not from wages or salary, by actually examining the income checks, check stubs, or other reliable data the tenant possesses.

(4) Form FmHA 444-8 need not be required of tenants who have executed Form HUD 52659 "Application for Tenant Eligibility and Recertification." A copy of Form HUD 52659 will, however, be provided to the FmHA District Director.

(k) *Supervisory assistance.* Supervision will be provided borrowers, in accordance with Subpart G of Part 1802 of this chapter (FmHA Instruction 430.2), to the extent necessary to achieve the objective of the loan and to protect the interests of the Government.

(1) *Limited profit determinations.* Applicants agreeing to operate on a limited profit basis will be permitted a return not to exceed 8 percent per annum on their initial investment. However, once the loan is made, the percentage return to the applicant agreed upon or indicated in the loan agreement or loan resolution, will not be changed. The initial investment may exceed the required 5% in § 1944.213(a)(2) and may include the following:

(1) Any cash contribution which, when added to the FmHA loan amount, is not in excess of the security value of the project.

(2) Value of the building site or essential related facilities contributed by the applicant. Value will be determined by an appraisal in accordance with applicable FmHA regulations on "as is" basis by the FmHA employee authorized to make the appraisal for the project less any amount owned on the property.

(3) The initial operating capital that the applicant is required to provide in accordance with § 1944.21(a)(5)

(m) *RRH loans made in connection with HUD Section 8 Housing Assistance*

Payments program. RRH loans involving the HUD Section 8 Housing Assistance Payments program under the Memorandum of Understanding (Exhibit H-1) will be handled in accordance with Exhibit H of this Subpart. Any applicant who has obtained approval of use of Section 8 units from HUD or a State Housing Finance Agency, which cannot be processed in accordance with Exhibit H, may be processed in accordance with HUD's regulations under a dual track processing system provided all other requirements of this Subpart are met. When a dual track processing system is followed, the provisions of paragraph II of Exhibit H to this subpart allowing for an interest rate reduction (interest credit) may be followed. Section 8 Housing Assistance Payments for existing housing will be handled in accordance with Exhibit G of this subpart.

(n) *Implementation of Office of Management and Budget (OMB) Circular A-95 concerning formulation, evaluation, and review of Federal programs and projects having significant impact on area and community development.* When projects will have 25 or more units, the provisions of FmHA Instruction 1901-H will be applicable. FmHA shall give all due consideration to clearinghouse comments and priority recommendations.

(o) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects shall comply with FmHA Instruction 1901-G. Projects involving Section 8/515 loans shall also comply with Exhibit H of this subpart.

(p) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 and Executive Order 11988 are applicable to FmHA authorities permitting financing of rental housing now located in, or to be located in, special flood or mudslide-prone areas as designated by the Federal Insurance Administration (FIA) of HUD Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) will be applicable.

(q) *Location of housing.* (1) The location of the housing project should expand the supply of decent, safe, and sanitary housing for low- and moderate-income, senior citizens, and handicapped persons in a nondiscriminatory way outside areas of concentration of economically disadvantaged or minority residents. The location should promote a greater choice of housing opportunities and avoid undue concentration of eligible tenants in areas containing a high

proportion of low-income persons, and should further fair housing.

(2) Project locations should promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (mentally handicapped must possess the capacity to enter into a legal contract), thereby opening up nonsegregated housing opportunities for minorities and helping overcome the effects of any past discrimination. To the extent possible, the location of an RRH project should provide housing opportunities for minorities outside areas of minority concentration and areas which are already substantially racially mixed. An area of minority concentration is any part of a community adjacent to or within the confines of a greater area such as a place, town, village, or city in which the majority of the residents are minority. If the proposed location is in an area of minority concentration, it will not be accepted unless:

(i) Comparable housing opportunities exist outside the minority area for minorities in the income range to be served by the project; or

(ii) The applicant provides written documentation which adequately demonstrates that there are no other acceptable sites available outside the area of minority concentration, and housing on the proposed site is necessary to meet an overriding housing need in the market area.

(3) Except as otherwise permitted by paragraph (q)(4) of this section housing projects must be located in residential areas as part of established rural communities where essential public facilities (such as schools, hospitals, and generally central water and sewer systems) and services (such as shopping, medical services, and pharmaceutical services) are readily available in close and convenient proximity to the site. Public facilities and services must be adequate to support the needs of the tenants and the housing project.

(4) FmHA will consider financing new construction or the purchase and rehabilitation of existing structures located in the downtown business areas of those rural communities that have established a comprehensive strategy for meeting their community development and housing needs, and that strategy includes the redevelopment, rehabilitation, restoration, or revitalization of the downtown business area. The proposed project site must be located within the downtown business redevelopment/revitalization area and the following conditions must be met:

(i) Essential public facilities (such as schools, hospitals, and generally central water and sewer systems) and services (such as shopping, medical services, and pharmaceutical services) must be readily available in close and convenient proximity to the site, and they must be adequate to support the needs of the tenants and the housing project.

(ii) The community must have an official short-term community development and housing plan which sets forth its comprehensive strategy for meeting identified community development and housing needs, particularly the needs of eliminating or preventing economic decay, slums, or blight; the needs of benefiting the lower income population; or other community development needs having a particular urgency. The strategy should include a community-wide component which describes the development strategy of the governing body, the major objectives the governing body seeks to accomplish, the priorities it has established, the factors taken into account in selecting areas for treatment, and the anticipated public and private sources of funds necessary to conduct the treatment of each area selected. In addition, the plan should contain the following component strategies:

(A) Neighborhood revitalization: The Strategy for alleviating physical deterioration, for maintaining viable neighborhoods, and for stimulating investment to upgrade neighborhoods affected by blight and deterioration.

(B) Housing: The community-wide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. Reference to any current HUD approved Housing Assistance Plan would be helpful as part of this component strategy.

(C) Economic development: The strategy for attracting private investment in the business community and for solving the critical problems which may be the result of a stagnating or declining tax base, or from population outmigration.

(iii) Evidence must be presented from the local governing body verifying that the community has adopted, through resolution or other official act, the community development and housing plan referenced in paragraph (q)(4)(ii) of this section. A copy of the adopted plan should be made available to FmHA. While it is not necessary that the downtown redevelopment/revitalization area be formally designated as an urban renewal or other similar area, evidence supporting a local determination that the downtown business area meets the

criteria established in the community development and housing plan must be maintained in the locality's records. Documentation received from the local governing body must also identify the site or structure involved in the applicant's RRH proposal as part of or essential to the downtown redevelopment/revitalization area.

(iv) Evidence must be made available to FmHA verifying the intended commitment of public and private resources which will be available for completing the other integrally related redevelopment/revitalization activities being undertaken in the downtown business area together with applicant's proposed RRH project.

(v) If the structure to be built or rehabilitated is more than two stories, the housing must be designated and designed for occupancy only by senior citizens and handicapped persons.

(vi) Prior review and concurrence must be received from the FmHA National Office before the FmHA State Director or District Director authorizes the applicant to develop a complete application. All of the information requested in § 1944.215(q)(4) must be provided by the applicant before National Office review.

(r) *Clean Air Act and Water Pollution Control Act requirements.* (1) As a condition for FmHA's making a loan in excess of \$100,000 and unless otherwise exempted, an applicant for a loan will:

(i) Comply with all requirements of section 114 of the Clean Air Act (42 U.S.C. 1857 C-9) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. (Such regulations and guidelines can be found at 40 CFR 15.4 and 40 FR 17126, April 26, 1975.)

(ii) As a condition for the award of contract, notify FmHA of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities. (Prompt notification is required prior to contract award.)

(iii) Certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR 15.20 as of the date of contract award; and

(iv) Include or cause to be included the above criteria and requirements in

every nonexempt subcontract and will take such action as the Government may direct as a means of enforcing such provisions.

(2) As a further condition for FmHA's making loan in excess of \$100,000 but not otherwise exempted, the applicant for the loan will secure the services of a contractor who agrees to comply with the provisions in paragraph (r)(1) of this section. (3) The term "facility" as used in this section only means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, EPA, determines that independent facilities are co-located in one geographical area.

(s) *Approval of construction contracts.* Construction contracts between the borrower and contractor for development of an RRH project will contain a provision that the contract is not in full force and effect until it has been approved by the State Director or the State Director's delegate in writing. This approval relates to form, content, and proper execution of the document and statement that FmHA is not be considered a party to the contract or incur any liability thereunder. Therefore, before loan closing or before the start of construction, whichever occurs first, the State Director or the State Director's delegated representative will approve the contract form, content, and execution by including the following paragraph at the end of the contract:

The Farmers Home Administration, as potential lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, hereby approves the form, content, and execution of this contract.

Date _____
Farmers Home Administration.
By: _____
Title: _____

(t) *Historic preservation requirements.* The District Director should take the necessary action to assure that the applicant will comply with the provisions of FmHA Instruction 1901-F. This regulation concerns compliance with the National Historic Preservation Act of 1966, the Archeological and Historic Preservation Act of 1974 (Pub. L. 93-291), and

Executive Order 11593 dated May 13, 1971.

§§ 1944.216-1944.220 [Reserved]

§ 1944.221 Security.

Each loan will be secured in a manner that adequately protects the financial interest of the Government. A first mortgage, except as indicated in paragraphs (a) and (c) of this section, will be taken on the property purchased or improved with the loan. A mortgage should be taken on only that part of the land which is necessary to provide adequate security for the loan as determined by the appraisal, except when excess land is purchased as authorized in § 1944.212(c)(3).

(a) A second mortgage will be taken on a site developed with prior RRH loan(s) when a subsequent loan is made to complete or finish out units on the site, or when a second initial loan is made to develop units on a contiguous site.

(b) Personal liability will not be required for the members or stockholders of any corporation or any partners in a limited partnership. Personal liability will be required of all members of other partnerships. For limited partnerships the State Director will obtain the advice of the Regional Attorney as to any modifications needed in the Promissory Note and Mortgage.

(c) If it is impossible or inadvisable for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible.

§ 1944.222 Technical, legal, and other services.

(a) *Appraisals.* When real estate is taken as security, the property will be appraised by an FmHA employee authorized to make real estate appraisals. If the security does not involve more than two rental units, the property will be appraised in accordance with the policies outlined in FmHA Instruction 422.3, available in any FmHA Office. For security involving more than two rental units, the appraisal will be made in accordance with Subpart B of Part 1809 of this chapter (FmHA Instruction 422.2). Form FmHA 426.1, "Valuation of Buildings," will be completed to show the depreciated replacement value of all the buildings existing or to be constructed on the property to be taken as security.

(b) *Title clearance and legal services.* When the applicant is an organization

or an individual with special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from OGC. In other cases, the provisions of Subpart A of Part 1822 of this chapter (FmHA Instruction 444.1) regarding title clearance and legal services will apply.

(c) *Architectural and Engineering Services.* (1) Housing and related facilities will be planned and developed in accordance with Subparts A and D of Part 1804 of this chapter (FmHA Instructions 424.1 and 424.5). The housing will be designed to meet the needs of the types of occupants who will likely occupy it.

(2) A written contract for architectural and engineering services will be required as outlined in Subpart A of Part 1804 of this chapter (FmHA Instruction 424.1).

(d) *Construction and development policies.* (1) Construction and development will be performed in accordance with Subparts A and D of Part 1804 of this chapter (FmHA Instructions 424.1 and 424.5), except that § 1804.5(h)(3)(ii) (paragraph V H 3 b of FmHA Instruction 424.1) will not apply to projects constructed by the owner-builder method. These projects will be governed by the following:

(i) The development cost may include a typical builder's fee. The typical builder's fee may be determined by local investigation and also from HUD data for the area.

(ii) The development cost cannot exceed that which is typical for similar type projects in the area.

(iii) The development cost for each individual case will be determined by the Multiple Family Housing Coordinator with the advice of the State Architect.

(iv) The plans and specifications must be specific and complete so that there is a clear understanding as to how the facility will be constructed and the materials that will be used.

(2) In all cases of RRH, loans exceeding \$50,000, interim financing for the construction period will be obtained when it is available at reasonable rates and terms in order to preclude the necessity for multiple advances of FmHA loan funds.

(i) The applicant shall provide preliminary evidence concerning the availability of interim financing with the application, or in any event, prior to loan approval.

(ii) FmHA loan funds will be obligated before the applicant proceeds with the final arrangements for interim financing.

(e) *Compliance with Federal, State and local codes, regulations and ordinances.* Planning, construction,

zoning, and operation of housing financed with an RRH loan will conform with any applicable laws, ordinances, codes, and regulations (including any licensing required governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, sanitation, use and occupancy), and must meet all the applicable laws and statutes pertaining to the operation of a facility in which some of the occupants may require some supervision and central services.

(f) *Contracts for legal services.* On projects requiring extensive legal services, the applicant will be required to have a written contract when loan funds will be used for these services. All such contracts will be subject to review and approval by FmHA and, therefore, should be submitted to FmHA before execution by the applicant. Contract P20S HhbR÷ for the types of services to be performed and the amount of the fees to be paid, either in lump-sum on the completion of all services or in installments as services are performed.

(g) *"How to Bring Rental Housing to Your Own Town" Manual.* Exhibit A may be used as a guide for organization applicants applying for loans to finance projects of substantial size. Extra copies may be obtained from the Finance Office for applicants after preliminary discussions indicate that a loan may be developed. The sample forms included as Exhibits A-1 through A-5 may be adapted for use as state forms so that adequate supplies will be available to applicants.

(h) *Technical services by consultant organizations.* Technical services by consultant organizations will be governed by § 1944.212(k).

(i) *Optioning of land.* If a loan includes funds to purchase real estate, the applicant will be responsible for obtaining an option on the parcel to be purchased. Form FmHA 440-34, "Option to Purchase Real Property," or other option form with provisions acceptable to FmHA and the applicant may be used. When an option form other than Form FmHA 440-34 is used, it is recommended that a provision be included indicating that the option is contingent upon FmHA making a loan to the buyer. After the loan is approved, the District Director will have Form FmHA 440-35, "Acceptance of Option," or other appropriate form of acceptance completed, signed, and mailed to the seller.

(j) *Use of, and accountability for loan funds.* Loan funds and any funds furnished by the borrower for eligible loan purposes may be deposited in accordance with the loan agreement or loan resolution and the provisions of

FmHA Instruction 1902-A. Collateral for deposit of funds will be pledged in accordance with § 1902.7 of FmHA Instruction 1902-A. Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan funds could not be used, should not be deposited in the supervised bank account with loan funds. Withdrawals of funds from the supervised bank account may be made only for legally eligible loan purposes.

(k) *Insurance.* The loan approval official will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with Subpart A of Part 1806 of this Chapter (FmHA Instruction 426.1).

(2) Suitable Workman's Compensation Insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged, or required when appropriate, to obtain liability insurance.

(4) Flood Insurance will be required on all buildings located in or to be located in special flood or mudslide prone areas in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.2).

(1) *Bonding.*

(1) The provisions of Subpart A of Part 1804 of this chapter (FmHA Instruction 424.1) pertaining to surety bonds are applicable to RRH loans. When interim financing is used during the construction period, the decision concerning whether or not to require surety bonds shall be the interim lender's. If the *interim lender* decides not to require surety bonds, a bond waiver is not required from the National Office.

(2) If the applicant is an organization, it will provide fidelity bond coverage for the official entrusted with the receipt, custody, and disbursement of its funds and the custody of any other negotiable or readily salable personal property. The amount of the bond will be at least equal to the maximum amount of money that the applicant will have on hand at any one time exclusive of loan funds deposited in a supervised bank account. The United States will be named co-obligee in the bond if not prohibited by State law. Form FmHA 440-24, "Position Fidelity Schedule Bond," may be used if permitted by State law.

§§ 1944.223-1944.230 [Reserved]

§ 1944.231 Processing preapplications.

Preapplications will be processed in accordance with this section to assure that loan funds are used, to the extent possible, to provide housing for eligible occupants in need of adequate housing.

(a) *Preapplications.* Preapplication information is used to determine the applicant's eligibility and priority for available funds, and to eliminate any proposals which have little or no chance for funding in the near future.

Information necessary in a preapplication consists of Form AD-621, "Preapplication for Federal Assistance," and all of the additional information and material outlined in Exhibit A-6. Preapplications should be filed in the FmHA County Office, but may also be filed in the District Office.

(b) *Action by the County Office.* The County Office may handle initial inquiries and provide basic information about the program. They are to provide the preapplication form (Form AD-621), Exhibit A-6 to this Subpart, and Form FmHA 449-10, "Applicant's Environmental Impact Evaluation." The County Supervisor may assist applicants as needed in completing Form AD-621 and the information required in Exhibit A-6. Preapplications filed in the County Office will be immediately forwarded to the FmHA District Office. The County Office will inform the applicant that further processing will be handled by the District Office, and will advise the applicant not to prepare or develop an application until notified by FmHA to proceed. An information folder will be established and maintained by the County Office once a preapplication is received.

(c) *Actions by the District Office.* Upon receipt of the preapplication, Form AD-621 and all other required information and material will be thoroughly reviewed by the District Director for completeness, accuracy, and conformance with program policy and regulations. Incomplete preapplications will be returned to the applicant for completion. In the event that the preapplication is filed in the District Office, the District Director may assist the applicant in completing the preapplication requirements. In such cases, however, the District Director will send the County Supervisor all of the appropriate information necessary to establish the County Office information file. After the District Director has fully reviewed the preapplication material, has determined that the preapplication is complete and accurate, and has properly assembled the preapplication material in an applicant case file, the

District Director will then forward the following to the State Director:

- (1) Form AD-621.
- (2) All information and material listed in Exhibit A-6.
- (3) Original and one copy of Form FmHA 440-46, "Environmental Impact Assessment."
- (4) Eligibility determination and recommendations.
- (5) Priority recommendations
- (d) *Actions by the State Office.* (1) Unless the applicant is an individual or an organization adopting without change the "Articles and Bylaws" prescribed by Exhibits E and F of this subpart or by State Supplements or has received clearance form OGC for the same type financing, the complete preapplication and any questions or comments of the State Director will be submitted to OGC for a preliminary opinion as to whether the applicant and the proposed loan meet or can meet the requirements of State Law and this Subpart.

(2) When the State Director determines it necessary, and for all preapplications in excess of the State Director's approval authority, the preapplication will be sent to the National Office for evaluation, authorization, and instructions. When projects are submitted to the National Office, the following information must be included in the submission:

- (i) The complete and properly assembled preapplication case file.
- (ii) The schematic or preliminary plans and specifications, together with the architectural comments and recommendations of the State Office Architect.
- (iii) The information required by § 1944.213(a).
- (iv) The comments and recommendations of the District Director.

(v) The comments and recommendations of the State Director.

(3) The State Director, with the assistance, advice, and council of the Multiple Family Housing Coordinator, will review the preapplication information, credit report(s), and the District Director's eligibility determination and recommendations.

(i) When considering authorizing the development of applications for loan funds, the State Director should consider the remaining funds in the State or District, as appropriate, and the amount of time necessary to complete the final applications. At the beginning of each quarter of the fiscal year, all preapplications on hand for which no Form AD-622 has been issued will be ranked according to the priority order established in this subpart. Applications

which obviously cannot be funded within a year of this time, and within 150 percent of the State's or District's allocation, will be given adverse notice through Form AD-622 and advised of their appeal rights in accordance with FmHA Instruction 1900-B. Generally the State Director should not authorize the development of applications for substantially more than 150 percent of the funds available in the State or District.

(ii) Preference in selecting and processing loan requests within the annual allocations, will be based on the priorities indicated and in the order they are listed below:

(A) Projects using FmHA's Rental Assistance (RA) or HUD's Section 8 program.

(B) Projects in areas or communities having a higher percentage of substandard housing. For this purpose FmHA will use the county data provided by the National Office, unless better and more specific data approved by the National Office is available for a particular State.

(C) Projects in areas or communities having the lowest per capita income per household, as published by the Department of Labor, Bureau of Labor Statistics.

(D) Projects which will serve the needs of rural communities located 50 or more miles from a town with a population of 50,000 or more.

(E) Projects having the highest percentage of three or more bedroom units, where the market data indicates a need.

(F) Projects where the applicant is a public body or nonprofit corporation.

(iii) In situations where priorities among competing loan requests are essentially equal, preference will be given to preapplications from public bodies and nonprofit corporations.

(4) After completing the review, determining priority, and making a decision concerning selection, the State Director will notify the District Director of the results of the review action. The State Director will return the preapplication information and the exeG4dA,OK:yC /al Form FmHA 440-46 to the District Office with authorization for the District Director to prepare and issue Form AD-622, "Notice of Preapplication Review Action."

(5) Form AD-622 will be prepared by the District Director stating the results of the review action. The original will be signed and delivered to the applicant, with a copy to the applicant's case file, a copy to the County Supervisor, and a copy to the State Director.

(i) Applicants with preapplications which are not favorably considered will

be notified in writing of the reasons why the request was not favorably considered, and will be informed in accordance with FmHA Instruction 1900-B, that they may request a further review of this decision.

(ii) Applicants with preapplications which are favorably considered, but are unable to be selected for further processing within approximately 150 percent of the State Office or District Office allocation of funds, will be notified that their preapplications lack sufficient priority for further consideration at the present time. Applicants should be advised in accordance with FmHA Instruction 1900-B that they may request a further review of this action. In addition, such applicants will be advised against incurring obligations for legal and architectural and engineering work, perfecting interests in land rights, and inviting construction bids or making other commitments which cannot be fulfilled without loan funds, until funds are actually made available.

(iii) When an applicant is notified to proceed with an application, the following paragraphs should be contained on or attached to Form AD-622: "The review action taken by FmHA is based upon representations made in your preapplication presented to FmHA. Any changes in project costs, size or scope of the project, rental rates to the tenants or subsidy costs to the Government, scope of services, sources of funds, or any other significant changes in the project or applicant, must be reported to and approved by FmHA in writing. Any changes not approved by FmHA shall be cause of discontinuing processing of the application. This action is not to be considered as loan approval or as a representation of the availability of funds. The loan docket may be completed on the basis of a loan not to exceed the amount shown on Form AD-622. If FmHA makes the loan, the interest rate will be that charged by FmHA at the time of loan approval. If a complete application has not been developed in approvable condition by the date specified on Form AD-622, FmHA reserves the right to discontinue processing the application."

§ 1944.232 Preparation of completed loan docket.

(a) *Information needed.* If the applicant has been requested to file an application, Form AD-625, "Application for Federal Assistance (Short Form)," with the additional forms, materials, and information outlined in Exhibit A-7, will be assembled and submitted to the District Director. An application is not considered complete until all required

information has been submitted in a complete and acceptable form.

(b) *District Director's responsibility.*

(1) When an applicant is notified to proceed with an application, the District Director should arrange for a preapplication conference with the applicant to provide copies of appropriate Exhibits and forms; furnish guidance necessary for orderly application processing; and initiate a processing checklist, (if one has been adopted for use in the State), for use in establishing a time schedule for completion of docket items. The District Director will confirm decisions made at this conference by letter to the applicant and will provide the applicant a copy of any processing checklist initiated. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy retained in the District Office will be kept current as application processing actions are taken. The copy will be periodically updated and routed through the State Office and back to the District Office for use in updating the State Office copy of the checklist.

(2) The District Director will assist the applicant in application assembly and processing, and will work closely with the applicant as the loan docket is being developed. As the application is being processed and the need develops for additional conferences, the District Director will arrange with the applicant for such conferences, and will extend and update any processing checklist initiated in connection with the application.

(3) The District Director will review and check all information and materials furnished by the applicant for completeness, correctness, and adequacy. The District Director will review the applicant's rental market survey in detail, and will determine its completeness and accuracy. A random sampling will be made if necessary to verify the completeness and accuracy of the survey. The proposed site will be inspected and the District Director will consider its overall desirability as well as conformance with the site location requirements of § 1944.215 (q). In addition, the District Director will evaluate the information presented concerning the manner in which the applicant plans to conduct its business and financial affairs, and will comment on the adequateness and appropriateness of the proposed management.

(c) *County Committee certification.* County Committees will not be used to review RRH loan applications.

(d) *Assembly, review, and distribution of complete loan docket items.*

Ordinarily, FmHA staff review will proceed as applications are being developed. However, prior to presenting the application to the loan approval official, the District Director will thoroughly examine all items to make sure they are properly and accurately prepared and are complete in all respects, including dates and signatures. The District Director will also set forth the proposed conditions of loan approval.

(1) Prior to presenting the properly assembled application to the approval official, the District Director will provide comments and recommendations, and obtain the written analysis and recommendations of the FmHA State Office Architect/Engineer. The District Director will also obtain the analysis and recommendations of the Multiple Family Housing Coordinator. This analysis will include a review of and recommendations concerning the proposed conditions of loan approval.

(2) Loan docket items will be assembled in the following order for distribution after loan approval:

Form No.	Name of form or document	Total Number of copies	Signed by borrower	Number for loan docket	Copy for borrower
FmHA 444-5	Multiple Family Housing Fund Analysis	4		4-O&3C	
FmHA 440-1	Request for Obligation of Funds	5	O&C	4-O&3C	1
AD-621	Preapplication for Federal Assistance	3	1	2-O&1C	1-C
Exhibit A-6	Information to be Submitted with Preapplication for RRH Loan	2	O	1-O	1-C
AD 622	Notice of Preapplication Review of Action	4		3-C	1-O
AD 625	Application for Federal Assistance (Short Form)	3	1	2-O&1C	1-O
Exhibit A-7	Information to be Submitted with Application for Federal Assistance (Short Form)	2	O	1-O	1-C
FmHA 400-4	Nondiscrimination Agreement	2	2-O&1C	1-C	1-C
FmHA 400-1	Equal Opportunity Agreement	2		1-O	1-C
FmHA 400-3 ²	Notice to Contractors and Applicants	3		1-C	1-C
FmHA 400-6	Compliance Statement (when applicable)	3		1-C	1-C
	Evidence of Legal Authority (copies of citation of specific provisions of State constitution and statutory authority) ¹	2	1	1-O	1-C
FmHA 422-7	Appraisal Report for Multiunit Housing	1		1-O	
FmHA 426-1	Valuation of Buildings	1		1-O	
	Proof of Organization (certified copy of character or articles of incorporation) ¹	2	1	1-O	1-C
	Certified copies of bylaws or regulations ¹	2	1	1-O	1-C
	List of names and addresses of officers, directors, and members, and membership interest held by each ¹	2	1-O	1-O-1-C	1-C
	Certified copy of Loan Resolution ¹	1	1	1-O	
	Loan Agreement or Resolution, if applicable	2	1	1-O	1-C
	Survey of land given as security, plans, specifications, cost estimates, and proposed manner of construction ¹	3	1	1-O	1-C
Exhibit A-5	Operating budget (first year)	2	1	1-C	1-C
Exhibit A-5	Operating budget (typical year)	2	1	1-O	1-O
Exhibit A-5A	Housing Allowances For Utilities and Other Public Services, if applicable	2	1	1-O	1-C

¹When applicant is an organization.

²One copy for contractor.

Other Loan Docket Items. A preliminary title and a Final Title Opinion or a title insurance binder, a mortgage title insurance policy, and a copy of deed, purchase contract, or other instrument of ownership. When applicable, include copy of lease or lease form to be used between borrower and public housing authority or other authorized lessees, report of lien search, option or foreclosure notice agreement, and items of information concerning prior mortgage.

(e) *Submission of docket to State Office.* When submitting the loan docket to the State Office for the review required in § 1944.232(d)(1), or in those

cases where the loan will be approved in the State Office, the docket must be properly completed and assembled, and must contain the comments and recommendations of the District Director. The State Director, with the advice of OGC if requested or needed, will prepare a memorandum to the District Director setting forth the conditions of loan approval, or requesting additional information if the material submitted is inadequate.

(f) *Submission of docket to the National Office.* If the State Director considers it necessary after completing the review of the docket, the State Director may submit recommendations,

a copy of a proposed memorandum of approval, and the complete loan docket to the National Office for review and recommendations. If the docket was required to be reviewed (or was reviewed) by OGC, the comments of that office will be included.

(g) *Press release.* When it is determined that the loan can be approved, a press release will be prepared in accordance with FmHA Instruction 2015-C. (Available from any FmHA Office.)

§ 1944.233 Loan Approval.

(a) *Authority.* Loans will be approved or disapproved in accordance with this Subpart and FmHA Instruction 1901-A. The State Director may redelegate loan approval authority in writing to State Office employees.

(b) *Loan approval action.* (1) Responsibilities of loan approval official. The loan approval official is responsible for reviewing the docket to determine that the proposed loan complies with established policies and all pertinent regulations. In making this review, the loan approval official will determine that:

(i) The applicant is eligible, and has legal authority to contract for a loan and enter into the required agreements.

(ii) The location of the housing meets the requirements outlined in

§ 1944.215(q).

(iii) The State Director will take necessary action to comply with § 1901.406 of FmHA Instruction 1901-I, on projects of 4 or less units.

(iv) The funds are requested for authorized purposes.

(v) The proposed loan is sound.

(vi) The security is adequate.

(vii) All pre-approval requirements have been met, including the applicant's execution of Form FmHA 400-4.

(viii) All other requirements will be met.

(2) Approval or disapproval of a loan.

(i) Approval. Before the loan approval official executes documents evidencing loan approval, a complete review of the project location and proposed management and rental procedures must be made to assure compliance with Title VI of the Civil Rights Act of 1964. If the loan approval official is assured of compliance after a review of the site location, management and rental procedures and FmHA Instruction 1901-E, the loan approval official may then execute the loan approval documents. When a loan is approved:

(A) The loan approval official will prepare and sign Form FmHA 440-1 in an original and two copies. The State Director or a designee will telephone the Finance Office Check Request Station

requesting that loan and/or grant funds for a particular project be obligated.

(B) Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in the rejection of the request for obligation. After the security code is furnished, all information contained on Form FmHA 440-1 will be furnished the Finance Office. Upon receipt of the telephone request for obligation of funds, the Finance Office will record all information necessary to process the request for obligation in addition to the date and time of request.

(C) The individual making the request will record the date and time of request and sign Form FmHA 440-1 in section 37.

(D) The Finance Office will terminally process telephone obligation requests. Those requests for obligation received before 2:30 p.m. Central Time will be processed on the date of the request. Requests received after 2:30 p.m. Central Time to the extent possible will be processed on the date received; however, there may be instances in which a request will be processed on the next working day.

(E) Each working day the Finance Office will notify the State Office by telephone of all projects for which funds are reserved during the previous night's processing cycle and the date of obligation. If funds cannot be reserved for a project, the Finance Office will notify the State Office that funds are not available within the State allocation. The obligation date will be 6 working days from the date the request for obligation is processed in the Finance Office. The Finance Office will mail to the State Offices Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request," confirming the reservation of funds with the obligation date inserted as required by item no. 9 on the FMI for Form FmHA 440-57.

(F) After notification by the finance Office that the funds have been reserved, the original only of Form FmHA 444-5 will be mailed to the Finance Office. Forms FmHA 440-1 for those obligations requested by telephone will not be mailed to the Finance Office. Immediately after notification by telephone of the reservation of funds, the State Director will call the Information Division in the National Office as required by FmHA Instruction 2015-C. Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form FmHA 440-1 on the obligation date. The State Director or the State Director's designee will record the

actual date of application notification on the original of the form as a permanent part of the District Office project filed with a copy in the State Office file.

(ii) Disapproval. If a loan is disapproved after the docket has been developed, the reason for such action will be shown on the original Form FmHA 440-1 will be initialed and dated. The District Director will notify the applicant of the disapproval of the loan and the reasons therefor. The disapproved docket will then be handled in accordance with (FmHA Instruction 2033-A).

(3) *Distribution of items.* After the loan is approved, the contents of the docket will be distributed as follows:

(i) To the Finance Office: Form FmHA 444-5 (original). After being processed, an original and copy of Form FmHA 440-57 will be processed distributed by the Finance Office.

(ii) To the State Office: One copy of Forms FmHA 440-1 and FmHA 444-5.

(iii) To the District Office: One copy of Form FmHA 440-1 and the remainder of the loan docket.

(iv) To the National Office: A copy of Form FmHA 444-5.

(4) To OGC: For a loan to an organization, or for a loan to an individual in special cases, the approved loan docket, including any title evidence, will be sent through the State Office to the OGC for preparation of closing instructions and any special legal documents required for closing. A certified copy of a required loan resolution or the original executed witnessed loan agreement must be supplied by the applicant in time to be included in the loan docket. No docket will be considered which fails to include such a required resolution or agreement. The OGC will route the docket, including closing instructions and any such legal documents, to the District Office through the State Office for review and for inclusion of any further instructions needed in closing the loan.

§ 1944.234 [Reserved]

§ 1944.235 Actions subsequent to loan approval.

(a) *Pre-commitment or closing actions.* After loan approval, the loan docket will be processed to the stage where a construction loan would normally be closed prior to the start of construction. During this processing, the following actions should be taken:

- (1) Obligation of FmHA loan funds.
- (2) Execution by the borrower of the appropriate loan agreement or loan resolution required in accordance with § 1944.215(e).

(3) Obtain closing instructions from OGC in accordance with the requirements of Part 1807 of this chapter (FmHA Instruction 427.1), and § 1944.233(b)(3)(iv) and § 1944.236(a).

(4) Unless initial operating and maintenance capital is included in the loan in accordance with § 1944.212(n), the applicant will furnish evidence of the deposit of initial operating and maintenance capital into the general fund account of the project.

(5) The borrower will provide evidence indicating the terms and final arrangements for interim financing.

(b) *Financing during the construction period.* (1) Interim financing. In all cases of RRH loans exceeding \$50,000, when it is possible for funds to be borrowed at reasonable interest rates on an interim basis from commercial or public sources for the construction period, such interim financing will be obtained to preclude the necessity for multiple advances of FmHA funds. Interim financing will be used subject to the following:

(i) FmHA will assume the same responsibilities as if FmHA funds had been advanced from the standpoint of approving construction contracts, supervision of construction, and assuring compliance with applicable equal opportunity, nondiscrimination, and Davis-Bacon Act requirements.

(ii) The FmHA State Director or District Director will deliver a copy of Form FmHA 440-57 to the proposed interim lender as evidence of the FmHA commitment to the applicant. The guide letter shown as Exhibit D of this Subpart will be used by the State Director or District Director to inform a proposed interim lender that funds in specified amounts have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions, the builder's performance is acceptable and all construction bills are paid.

(iii) Since FmHA's commitment to the interim lender is contingent upon acceptable performance by the builder and payment of all construction bills, the interim lender should be advised of the additional risk involved if the builder is unable to provide, or the interim lender does not require a payment and performance bond. Although partial payments to the builder constructing the project by the contract method of construction must be made in accordance with the approved construction contract, the interim lender should be encouraged to limit the disbursements of interim loan funds to 60 percent of the value of acceptable work in place, and in no case may the interim lender be permitted to make

disbursements of more than 90 percent of the value of acceptable work in place.

(iv) Any cash for land purchase or development that is to be furnished by the applicant in fulfillment of the applicant's contribution requirement in § 1944.213(a)(2) must be placed on deposit with the interim lender and disbursed prior to any disbursement of interim loan funds.

(v) A supervised bank account need not be established for funds obtained through interim financing. However, in order to assure that funds are requested and used for authorized purposes, requests for partial payment shall be submitted through the District Director on Form FmHA 424-18, "Partial Payment Estimate," or other professionally recognized form containing the certifications of the architect, applicant, and FmHA representative shown on Form FmHA 424-18. For recordkeeping purposes, Form FmHA 402-2, "Statement of Deposits and Withdrawals," should be used to record the deposit of applicant funds for construction with the interim lender, and FmHA approved disbursements of interim loan funds.

(vi) When the project is substantially complete, the FmHA loan may be scheduled for closing. A project is substantially complete when it is possible in accordance with any contract documents, applicable State or local codes or ordinances, and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and use of the buildings. Upon substantial completion the owner's architect/engineer must issue a dated and signed statement certifying to substantial completion. The owner's architect/engineer will, with FmHA's assistance, also prepare and verify a punch list of any minor items of development that need to be corrected and completed.

(vii) The FmHA loan may be closed, permanent instruments issued to evidence the FmHA indebtedness, and FmHA loan funds used to retire the interim indebtedness when the project is substantially complete and all bills have been paid. As evidence of the fact that there are no unpaid obligations outstanding in connection with the project, the applicant will be required to submit to the District Director, at or prior to loan closing, signed statements from the contractor, architect, engineer, and attorney indicating that obligations for material, labor, or services have been paid in full, and have been paid in accordance with their contracts or other agreements, less any funds withheld for minor punch list items. Form FmHA 424-10, "Release by Claimants" or other

similar form may be used for this purpose.

(2) Multiple advances of RRH loan funds. In the event interim financing is not available, and applicant supplies such evidence, multiple advances will be used subject to the following:

(i) In those cases where relatively large amounts of funds are to be expended for purchases of real estate or for other reasons at the time of closing, separate checks for such purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing such loan funds in the supervised bank account and reduce the amount of required collateral.

(ii) Except as indicated in paragraph (b)(2)(i) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. The retained percentage withheld from the contract to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering, or architectural costs, interest, and other expenses as needed. The borrower will prepare Form FmHA 440-11, "Estimate of Funds Needed for 30-day Period Commencing _____," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director or the District Director's delegate. After it is determined that the estimate prepared by the borrower is adequate, the advance will be requested on Form FmHA 440-57 in accordance with the FMI and it will be forwarded to the Finance Office. As an example, for a loan of \$100,000, the advances may be made as follows:

Assuming that the loan will be closed on July 1, the borrower will complete Form FmHA 440-11 in sufficient time so that the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	\$30,000
Land Acquisition	5,000
Architectural	4,000
Legal	1,000
Total	\$40,000

An advance in the amount of \$40,000 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form FmHA 440-11, and will be prepared in sufficient time so that the estimated

amount of funds will be available on August 1. This estimate of funds might be broken as follows:

Construction	\$20,000
Architectural	1,000
Total	\$21,000

A copy of Form FmHA 440-57 specifying the amount then will be forwarded to the Finance Office. The same routine will be followed for each advance until the project is completed.

(iii) When the project is substantially complete, final payment to the contractor may be scheduled for disbursement. A project is substantially complete when it is possible in accordance with any contract documents, applicable State or local codes or ordinances, and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and use of the buildings. Upon substantial completion, the owner's architect/engineer must issue a dated and signed statement certifying to substantial completion. The Owner's architect/engineer will, with FmHA's assistance, also prepare and verify a punch list of any minor items of development that need to be corrected and completed. More than adequate funds to cover the costs associated with correcting or completing the minor items identified will be withheld from the contractor's final payment until full performance.

(iv) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(c) *Requesting check.* When loan approval conditions can be met, including any real estate lien required, and a date for FmHA loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with either paragraph (b)(1) or (2) of this section. The District Director or the District Director's delegate will then order the loan check so that it will be available on or just before the date set for loan closing.

(d) *Increase or decrease in the amount of the loan.* If it becomes necessary for the amount of the loan to be increased within the same fiscal year but prior to loan closing, the loan approval official or District Director will request that all distributed docket forms be returned to the District Office. The loan docket will be revised accordingly and reprocessed. If it becomes necessary for the amount of the loan to be increased after the fiscal year of the loan obligation has passed, but prior to loan closing, the District Director will process a subsequent loan for the amount of increase. If it becomes

necessary that the amount of the loan be decreased prior to loan closing, the District Director will notify the Finance Office of the decreased loan amount by memorandum. The District Director's memorandum will, at a minimum, contain the following:

- (1) The applicant's name.
- (2) The applicant's case number.
- (3) The fund code.
- (4) The nature of the request.
- (5) The amount of decrease.
- (6) The new amount of loan (after decrease).

(e) *Cancellation of loan.* Loans may be canceled after approval and before loan closing as follows:

- (1) The District Director will prepare Form FmHA 440-10, "Cancellation of Loan or Grant Check and/or Obligation" in an original and two copies (3 copies if the check is received in the District County Office from the Regional Disbursing Office). The original and copies will be sent to the State Director with the reasons for requesting cancellation. If the State Director approves the request for cancellation, the original request will be forwarded to the Finance office after making appropriate adjustments in the records to control loan allocations. A copy or copies of Form FmHA 440-10 will be returned to the District Office.

- (2) If the loan check is received in the District Office District Director will return it to the Disbursing Center, U.S. Treasury Department, Post Office box 3329, Kansas City, Kansas 66103, with a copy of Form FmHA 440-10.

- (3) All interested parties will be notified of the cancellation as provided in Part 1801 of this chapter (FmHA Instruction 427.1).

- (f) *Handling loan check.* The loan check will be handled in accordance with paragraph IV of FmHA Instruction 102.1 available in any FmHA office and FmHA Instruction 1902-A.

- (g) *Property Insurance.* Buildings will be insured in accordance with Subpart A of Part 1806 of this Chapter (FmHA Instruction 426.1).

§ 1944.236 Loan closing.

(a) *Applicable instructions.* RRH loans will be closed in accordance with applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) and any State Supplements. Loan dockets for an organization and loan dockets for an individual in special cases will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization applicant may use any designated attorney or title insurance company to close the loan in accordance with the applicable loan closing instructions, provided the

attorney or title insurance company and their principals or employees are not members, officers, directors, trustees, stockholders or partners of the applicant entity. Nonprofit organizations may use a designated attorney who is a member of their organization provided the cost is in accordance with § 1944.212(k).

(b) *Mortgage.* Unless OGC determines the form to be inappropriate, real estate mortgage Form FmHA 427-1 (State), "Real Estate Mortgage for _____," will be used. For loans to organizations, Form FmHA 427-1 will be modified as prescribed by or with the advice of OGC with respect to the name, address, and other identification of the borrower, the style of execution, and the acknowledgment.

(1) The mortgage or other instrument will contain the following covenant:

"The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer."

(2) When a loan resolution or loan agreement is used, an additional paragraph will be included in the mortgage to read as follows:

"This instrument also secures the obligations and covenants of Borrower set forth in Borrower's Loan Resolution (Loan Agreement) of (Date), which is hereby incorporated herein by reference."

(3) In case of a loan to an individual where a loan agreement is not used, additional paragraphs will be included in the mortgage to read as follows:

"Occupancy of the housing and related facilities on the property will be limited to eligible occupants as defined in the regulations of the Farmers Home Administration, unless the Government gives prior written approval to other Occupancy."

"As required by the Government: Borrower will permit the Government to inspect and examine the operation of the housing and the books, records, and operations of Borrower; submit regular and special reports and pertinent to the purpose of the loan or the Government's financial interests; subject rents and charges and other terms of rental agreements with occupants of the housing, and compensation to employees connected with its operation, to prior approval by the Government, or to adjustment at the direction of the Government when necessary in its judgment to carry out the purpose of the loan or protect its financial interests; and comply with any other requirements which in the discretion of the Government are reasonably appropriate to the purpose of the loan or protection of the Government's interests. Revenue from the housing shall be first used to pay operation and maintenance costs of

such housing and to make adequate provision to meet required payments as they become due on the FmHA rural rental housing loan."

(c) *Promissory note.* (1) Form FmHA 440-16 will be used. Regular amortized payments for principal and interest will be scheduled on a monthly basis. Instructions for preparation in the FMI for the note will be followed.

(2) The amount to be shown in the note will be the same as shown on Form FmHA 440-1. The note will be dated the date of loan closing except as authorized in Part 1807 of this Chapter (FmHA Instruction 427.1).

(3) Payments on RRH loans will be scheduled on the note in accordance with the FMI. As provided in § 1944.215(c), the principal installments during the first and second years after loan closing may be deferred.

(4) The note(s) will be signed in accordance with the FMI and Part 1807 of this chapter (FmHA Instruction 427.1).

(d) *Recorded mortgage.* When the real estate mortgage is returned by the recording official, the District Director will retain the original in the borrower's case folder. If the original is retained by the recording official for the county records, a conformed copy including the recording data showing the date and place of recordation and book and page number will be prepared and filed in the borrower's case folder. A copy of the mortgage, conformed as to all matters except the recording date, will be delivered to the borrower.

(e) *Date of closing—establishment of account.* (1) An RRH loan is considered closed when the security instrument is filed of record or, if no security instrument is filed of record, when the loan funds are deposited in the supervised bank account or otherwise made available to the borrower after the borrower executes and delivers the note and any other required instruments.

(2) After the loan is closed, the account and case folder will be established in accordance with FmHA Instructions 405.1 and 2033-A (available in any office), respectively.

§ 1944.237 Subsequent RRH loans.

A subsequent RRH loan is a loan made to an applicant or borrower to complete or repair the units planned with the initial loan.

§ 1944.238 Coding loans as to initial or subsequent.

A borrower may obtain financing for more than one project. Each project will be coded as an initial loan when the total number of units are built or purchased at one place at one time. A subsequent loan will be coded when an additional loan or loans are necessary

to complete or repair the units planned with the initial loan. As an example, the borrower may obtain initial loans for more than one project in the same county, in different counties under the same District Office jurisdiction, or in more than one District Office jurisdiction. Codes to be used will be in accordance with the FMI for Forms FmHA 440-1, FmHA 440-57, and FmHA 444-5.

§ 1944.239 Complaints regarding discrimination in use and occupancy of RRH housing.

Any occupant or applicant for occupancy or use of RRH housing or related facilities who believes he or she has been discriminated against because of race, color, religion, sex, marital status, handicap or national origin should file a complaint with the Secretary of Agriculture (or with the Office of Equal Opportunity), U.S. Department of Agriculture, Washington, D.C. 20250. If a complaint is made to an FmHA county, district, or State office, the complaint should be directed to the Office of Equal Opportunity (USDA-OEO) by the FmHA employee in charge of that office. If the complaint is forwarded to USDA-OEO by a county or district office, the State Director will be made aware of the complaint.

(a) It is preferred that the complaint be in writing and signed by the complainant. The complaint may, however, be telephoned to the FmHA District Office. The complainant should provide the following information:

- (1) The name and address (including telephone number) of the complainant.
- (2) The name and address of the person committing the alleged discrimination.
- (3) Date and place of the alleged discrimination.
- (4) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(b) If a complaint is received by an FmHA Office, the County Supervisor, District Director, or State Director will acknowledge receipt of the complaint and promptly forward it to the USDA Office of Equal Opportunity, Washington, D.C. 20250.

(c) Accompanying the complaint should be a statement from the District Director or the State Director as to whether the security instrument or other document executed by the borrower contains a nondiscrimination agreement. The statement also should include any other information which the State Director or District Director has pertaining to the complaint. The District Director or State Director should delay a comprehensive investigation of any

complaint until requested to do so by the National Office.

(d) The USDA Office of Equal Opportunity will determine whether discrimination did in fact occur. Appropriate steps will be taken to ascertain the essential facts. The USDA Office of Equal Opportunity will handle complaints in accordance with Department regulations, (which are found at 7 CFR 15.6).

(e) If it is found that the complaint is without substance, the parties concerned will be so notified.

(f) If it is found that the borrower's discrimination agreement in the security instrument or elsewhere was violated, FmHA will inform the parties of such finding and advise the violator to take the action necessary to correct the violation and to give appropriate assurance of future compliance.

(g) If the borrower should fail to take such action and assure future compliance, the Administrator may take further appropriate action.

§ 1944.240 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, the immediate health or safety of the tenants or the community.

The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data: Demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identifying how the adverse impact will be eliminated.

§§ 1944.241-1944.245 [Reserved]

§ 1944.246 Rural Cooperative Housing Loans Policies, Procedures, and Authorizations.

§§ 1944.247-1944.250 [Reserved]

Contents

- Introduction
- Applying for a loan
- Review of Application
- Developing Loan Docket
- Review of the Complete Docket
- Construction
- Exhibits
 1. Legal Service Agreement
 2. Survey of Existing Rental Housing
 3. Rental Housing Survey
 4. Rental Housing Survey Summary
 5. Operating Budget
 - 5A. Housing Allowances for Utilities and other Public Services

6. Information to be Submitted with Preapplication for Rural Rental Housing (RRH) Loan
7. Information to be Submitted with Application for Federal Assistance (Short Form)
8. Objective Guides to Assist Management in Determining the Ability of Tenants to Sustain Relative Independence
 - 8A. Physical Self Maintenance Scale (PSMS)
 - 8B. Instrumental Activities of Daily Living Scale (IADL)
 - 8C. Index of Independence in Activities of Daily Living (ADL)

Introduction

Most area in rural America need more adequate rental housing. The elderly with modest incomes often live in improvised flats or apartments that are cold in the winter and hot in the summer because adequate housing at a reasonable rent is not available. Others such as school teachers and the newly married often cannot find suitable rental housings of any kind in the rural community where they work. Other households who prefer to rent have the choice of either commuting many miles to work or living in the substandard rental housing that is available in small towns.

To help reduce this rental housing shortage, the Farmers Home Administration (FmHA) finances rental housing in rural communities. Nonprofit organizations, other types of organizations as well as individuals may qualify for loans. Information about these loans is available at the local office of the Farmers Home Administration.

This handbook has been written to assist interested persons and groups in completing an application and obtaining the information required for a loan docket. It also briefly explains requirements regarding the construction and operation of the rental housing.

The basic guidelines in this handbook apply to all applicants; however, some requirements will vary depending on the size of the project and whether the applicant is a nonprofit organization, other type of organization, or an individual.

The objective of the Rural Rental Housing (RRH) loan program is to provide credit for good rental housing, designed for independent or congregate living, at rental rates that senior citizens, handicapped persons, and other people with low and moderate incomes can afford.

Successful rental housing depends on the existence of three important conditions; namely:

There must be a need for the rental housing to be built.

The housing must fit the needs of prospective occupants from the standpoint of design, location, and cost.

The applicant must provide good management.

An applicant for a loan will need to provide adequate information to FmHA to show that these basic conditions can be met.

Applying for a Loan

An individual, organization, or group organizing for this purpose may apply for an RRH loan to finance rental housing. The

application should be made to the local FmHA County Supervisor, but also may be made to the FmHA District Director serving the area in which the housing is to be located.

The FmHA pamphlet on RRH loans should be read by the applicant before applying for a loan. The applicant also should discuss the proposed housing with the County Supervisor or District Director before completing an application.

Applying for a loan begins with a "Preapplication for Federal Assistance" on Form AD-621. Attached or included with the preapplication form should be the supporting material or information listed in Exhibit A-6. Together, this information will enable FmHA to determine:

- Eligibility of the applicant,
- Feasibility of the proposed housing, and
- Whether the proposed housing can appropriately be financed by the FmHA.

This information usually can be furnished by the applicant without formally hiring professional services. It should be factual and specific based on objective investigations and realistic estimates. In addition to the information shown in exhibit A-6, the following paragraphs will provide guidance concerning the subjects that need to be addressed in a preapplication:

1. Identification of the applicant

The name, address, and occupation of an individual applying for an insured RRH loan should be provided. Organizations should attach a certified copy of their charter or articles of incorporation and bylaws, names of members of the board of directors, and a list of names and address of stockholders, partners, or members showing their percentage interest in ownership of the organization. Groups being organized should list the names and addresses of the organizer, their proposed percentage interest in ownership, and the type of organization they plan to form.

2. Experience of Applicant in Operating Rental Housing

Describe any experience the applicant has had with rental housing, the location of the housing, and the applicant's duties in connection with the housing.

3. Applicant's Financial Situation

A current, dated, and signed financial statement showing assets and liabilities, together with information on the repayment schedule and status of each debt, must be included in the preapplication. If the applicant is a closely held corporation, a financial statement should be provided by each director and by each member who holds an interest in excess of 10 percent in the corporation.

4. Test for Other Credit

The key to the test for other credit is not merely an applicant's inability to obtain credit from other real estate lenders. The key is whether the credit that is available will enable the applicant to rent the rental units to eligible tenants at rental rates within their payment ability. Applicants other than State or local public agencies should contact other lenders making long-term loans for housing in the area in order to determine (a) the amount

of the loan the lender is willing to provide, (b) the interest rate and terms at which the loan would be available, and (c) if credit is not available, the reasons why the lender is not willing to extend credit.

5. General Description of the Housing Planned

A brief narrative description of the housing planned would be helpful. It should include the following items:

The type of project and structures proposed, (such as garden apartments for senior citizens and handicapped persons, townhouses for low- and moderate-income persons, or congregate housing for senior citizens and handicapped persons).

The size of each type of living unit measured in square feet of living area.

The total number of units proposed, and the number of each type of living unit proposed.

The type of construction proposed.

The estimated total development cost per unit.

The estimated total development cost of the entire housing project broken down into the following general categories: General construction, electrical, plumbing, heating/cooling, excavating and trenching, site development (including landscaping), land, pro-rated share of any off-site development, interest during construction, architectural/engineering fees, legal and/or closing cost and any other itemized cost.

Schematic design drawings should be included with this narrative description, and should include the proposed plot plan, unit plans, and typical elevation.

6. Applicant's Contribution

Applicants may contribute cash, free and clear title to the building site, or a combination of both as an equity contribution. In addition, applicants should show the amount of funds available to cover the cost of any furnishings and for initial operating expenses.

7. Location of Housing to be Built

Describe the site and how it is located in relation to services occupants of the housing will require. A map of the community with the site, stores, churches, schools, pharmacies, doctors, and hospitals, is a convenient way to do this. The map also should show significant features such as main highways, railroads, rivers and lakes. The use of property surrounding the site also should be indicated.

8. Why is the Housing Needed?

An individual, organization or group interested in applying for an RRH loan should investigate the need for more rental housing in the community and become acquainted with families who might be eligible for the kind of rental housing FmHA can finance. The application should include a summary of the information obtained by the applicant to show that there are enough people in the town and its trade area who are eligible to occupy the housing and are willing and able to pay the required rent.

Success of the project will depend on the need for the housing in the community, the rental levels, and the applicant's ability to

properly manage the housing. The applicant's basis for conclusion that the proposed rental housing will be successful should be included in a brief statement.

Review of Application

The preapplication and supporting information should be sent to the FmHA County Supervisor. The County Supervisor will forward the preapplication material to the FmHA District Director who in turn will notify the applicant when FmHA reaches a conclusion after it has reviewed the material submitted. If it appears a loan can be made, the District Director will explain to the applicant the additional steps that will be required. In case favorable action cannot be taken on the application, the District Director will explain the reasons and may be able to suggest changes to permit a loan to be made.

Developing the Loan Docket

When authorized to proceed with the loan docket and assemble a complete loan application, the District Director will review with the applicant each of the items listed in Exhibit A-7 with Form AD-625, "Application For Federal Assistance (Short Form)," to complete the docket. The amount of information required will vary based on the complexity and size of the proposed housing project. The District Director will also provide forms and guides to assist the applicant in recording required information. Some of the guides are included as exhibits in this handbook. The applicant is responsible for providing the information required. The District Director will assemble this information and complete the docket.

The following are steps which may be followed in developing a loan docket. The first two steps are applicable only to nonprofit organizations. The other steps apply to any applicant.

1. Getting Organized if Applicant is a Nonprofit Organization and Has Not Adopted Articles of Incorporation and Bylaws

Steering Committee. The group may choose a steering committee to act for them. An attorney will usually be required to advise the organization on incorporation and assist in developing the loan application. The steering committee should select an attorney who is interested in the proposed housing and will render the necessary services promptly and for a reasonable fee.

Articles of Incorporation and Bylaws. FmHA has developed model articles of incorporation and bylaws for nonprofit organizations. The steering committee should arrange for the District Director to meet with the attorney. The District Director will give the attorney copies of the FmHA model articles of incorporation and bylaws and explain FmHA requirements.

Attorney's Fees. Reasonable attorney's fees may be included in the FmHA loan. A written agreement between the applicant and attorney is required. See Exhibit A-1 for a sample copy of such an agreement.

Board of Directors. The steering committee usually selects the incorporators for the corporation. The board of directors of the corporation is responsible for conducting the corporation's business, including not only

obtaining the loan, but also providing overall management after the housing is completed.

2. Obtaining Broadly Based Membership

A nonprofit corporation applying for a loan must have and maintain a broadly based local membership representing a variety of interests in the community, including leaders in the community. The members may be both individuals and organizations, but each member is limited to one vote.

The purpose of the broadly based membership requirement is to obtain community support, provide enough members to be able to rotate officers and members of the board of directors, protect the Government's financial interest as mortgagee, and provide assurance that the housing will be a success and the purpose of the loan carried out.

In RRH loans made to nonprofit organizations and public bodies, there is no profit incentive. The term of the loan may be for as long as 50 years. Therefore, factors such as the prospect for continuous competent management and supervision, maintenance, and adequate community support of the housing project over the expected life of the loan are important.

A membership list showing the names and addresses of each member should be maintained by the secretary of the organization.

Number of members required. The number of members required to meet the "broadly based membership" requirement will vary, depending upon such facts as the applicant's experience and financial condition, the size of the housing project, the size of the community, and the ratio of loan to the appraised value of the security. The board of directors with the advice of FmHA should decide the number of members needed to assure their organization of sufficient community support.

Contributions by members. Nonprofit corporations may require a membership fee or ask prospective members for a contribution. This is the method often used by nonprofit corporation applicants to raise initial operating capital. However, no such fee or contribution can entitle a member or prospective member to a preference in occupancy of the housing.

3. Initial Operating Capital

All applicants must have enough initial operating capital to get started. When justified, FmHA may include these funds in the loan when the loan is made to a nonprofit organization or public body. Initial operating capital should be sufficient to pay such costs as property and liability insurance premiums, fidelity bond premiums when applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction, and other initial expenses.

The applicant can determine the amount required by working out a detailed budget of income and expenses for the period of time until the housing is ready for occupancy and rental income will be available. Two percent of the total cost of the proposed project will usually cover the costs of getting the housing

started if the applicant does not intend to provide furniture or movable equipment for the units. The actual budget, however, may indicate that more than 2 percent is needed.

4. Analysis of Market to Determine Demand for Rental Housing

Applicants should discuss with the District Director the type of market analysis that will be needed. This will vary with the community and the size of the project. Applicants who are interested in developing larger (10 units or more) projects will have to make a complete market analysis showing the need and demand of rural rental housing in the area. The market analysis will indicate the demand for rental housing from prospective eligible occupants in the town in which the housing will be located and the trade area around it.

Since the intent of the program is to provide adequate housing for the eligible permanent residents of the town, the economic justification for the size of the project and the type of units provided should be based primarily upon the need and demand from eligible prospective occupants who are permanent residents of the town. Demand from the more temporary residents of a town, (such as college students), should be discounted in determining project size. The information needed in a rental market analysis includes:

- Estimate of number of houses or apartments in the area currently for rent.
- Characteristics of available rental housing, such as location, quality and size of units, type of building, age of structure, vacancy rate, reasons for vacancies, and rental levels.
- Characteristics of the eligible occupants, such as single or couples, male or female, size and composition of household, number of senior citizens, number of nonsenior citizens, and number of handicapped.
- Income and financial condition of the people in the area who would be eligible to occupy the housing as planned.
- Present living arrangements of eligible occupants in the area and the extent to which inadequate housing is associated with health or financial conditions.
- Estimate of the number of eligible occupants who are willing and financially able to occupy the proposed housing.

In order to verify that the information presented in the market analysis is accurate, the applicant may also be requested to conduct a rental market survey to identify the number of tenants the applicant can expect for the kind of housing planned. The rental market survey will involve the identification of individuals who are both eligible to occupy the proposed housing and actually ready and financially able to occupy the proposed rental housing.

To assure full occupancy as soon as the housing is completed, about 50 percent more eligible prospective occupants than the number of units to be built should be identified in the market survey before the loan docket is submitted. Prospective occupants who are temporary residents of the community should not be included in the market survey.

People interested in becoming occupants can be identified by:

Personal solicitation by the applicant.

A public meeting. (The District Director can arrange to have someone from FmHA assist the applicant in conducting the meeting.)

Newspapers, TV and radio. (Coupons that can be clipped from a newspaper and sent to the applicant to indicate interest have been used by some applicants.) The applicant should contact each interested person to find out if he or she would be eligible, willing and able to move into the housing when it is completed. A list of the names of prospective occupants should be maintained in the order in which they indicated their interest. The possibility exists that the list could serve as a preliminary waiting list from which the first occupants of the housing may be selected.

Exhibits A-2, A-3, and A-4 are sample forms which may be modified as necessary by the applicant and used to assist in the assembly of the information for the rental market analysis and the rental market survey.

5. List of Prospective Occupants

In order to assure that the proposed housing will be fully occupied shortly after completion of construction, the applicant should begin developing a waiting list of prospective eligible occupants early in the development of a loan docket. Many of the persons identified in the rental market survey may form the initial nucleus of prospective occupants.

6. Planning to Fit the Market

Planning the housing to fit the market existing in the community involves more than obtaining a blueprint of the building. It requires a careful evaluation of conditions in the community and careful planning to assure that the result will be good rental housing designed for independent living at a cost senior citizens, handicapped persons, and other people with low to moderate incomes can afford. Well planned housing is:

Convenient, attractive, safe, and comfortable.

Easily maintained.

Located where its occupants can have easy access to the goods and services they require for daily living.

Planned to meet the local codes and regulations.

Designed to fit the market for the future as well as the present.

Priced to rent for no more than the prospective occupants believe they can afford.

A word of caution: Do not build more units than needed in the area. Keep the rents down to the level prospective tenants are able and willing to pay. Start with a modest number and if experience demonstrates a need for more units, additional loans to create more rental units can be considered.

The District Director can provide information that will help the applicant in planning the housing, such as suggested design considerations and construction guides.

7. Selecting an Architect

The services of an architect are recommended for all rental housing projects unless they involve only a few units (usually not more than 4), standards type plans are

used, and architectural services are not required by State law. The cost of an architect/engineer registered to perform architectural engineering services in the State may be included in the loan.

Before anything more than schematic drawings are prepared, the Architect/Engineer, the FmHA Architect/Engineer, the applicant and the District Director should arrange a meeting. The purpose of this meeting will be to acquaint the applicant's architect with the purposes of the housing and the requirements of FmHA. This will be helpful in eliminating misunderstandings. Among the topics that should be discussed are:

- Objectives of the rental housing program.
- Services the architect will be expected to perform.

- Agreement between architect and applicant.

- Stages at which FmHA should review plans and specifications.

- Design requirements that will produce good housing at a reasonable cost.

8. Selecting a Site

The location of the housing is an important part of planning to fit the market. Tenants will require easy access to required services. A desirable residential setting within a rural town is essential. Cost also is important.

The total cost of the site, including the cost of site improvement as well as the price of the land, must be considered. Both may be included in the loan.

Before buying a site, it is essential that the applicant consult with the architect/engineer to determine the suitability of the site for the proposed housing. The structure to be placed on the site must not only take into consideration the need of those that will be occupying it, but also the unique constraints of the site it will be located upon. The applicant should also consult with local authorities with regard to building restrictions, zoning, public utilities, taxes and any proposed public work in the area. The applicant should not enter into any firm agreement to buy a site with the expectation of receiving an FmHA loan without consulting with the FmHA District Director.

Loan funds made available to purchase land may not exceed the present market value of the land in its present condition as determined by an FmHA appraisal.

9. Plot Plan, Detailed Preliminary Plans and Specifications, and Cost Estimates

The size, complexity and cost of rental housing projects can vary from a duplex unit located on a residential building lot, to a complex of buildings located on a site containing several acres. The applicant is required to provide preliminary plans and specifications in enough detail to enable FmHA officials to determine whether or not the proposed housing will be the kind of rental housing FmHA is authorized to finance. The District Director or other FmHA representative will explain to the applicant and the applicant's architect/engineer the kind of plot plan, preliminary plans, and specifications, cost estimates required for the loan docket. The docket also will contain a detailed trade-item cost breakdown showing

such items as: Land, building construction by trades, equipment, utility connections, site improvements, architectural services, interest during construction pro-rated share of any off site improvements, closing costs, and legal services. Items not being financed with loan funds should be shown separately.

The preliminary plans should include a plot plan showing the relationship of the proposed structure with the views from the apartments, the property lines, streets, utility lines, alleys, adjacent structures and their uses. It should also show proposed off-street parking for the occupants and their visitors. Other facilities such as private and public walks, private drives and recreation areas on and off the property, laundry drying areas, and garbage and refuse holding areas which are sufficient for the period between collections in the neighborhood should be shown.

10. Financial Statement

A current financial statement will be required at the time the loan docket is submitted for approval. Individuals applying for an insured rental housing loan may obtain forms from the District Director to provide their financial statement. The financial statement should show all assets and liabilities in sufficient detail to permit a thorough evaluation of the applicant's financial position. The status of each debt and the repayment terms also should be shown.

11. Budget

The initial budget should cover the period from the date the first construction expenses are incurred until the end of the applicant's first fiscal year following completion of the housing. After the final cost estimate has been made and the amount of the loan needed has been determined, a budget for a typical year should be developed.

This budget should be based on a typical annual operation several years after the loan is made. Budgeting is an important part of the management. The applicant should spend enough time working on it to assure that the estimates are realistic. Budgets will be required each year until the FmHA loan is repaid in full. The budget serves several purposes namely it:

- Helps determine rental rates.
- Indicates financial soundness.
- Serves as a guide for paying expenses.
- Exhibits A-5 and its accompanying Exhibit 5-A is a sample budget form and utility allowance form.

12. Loan Resolution or Loan Agreement

When the applicant is a corporation, or an individual applying for a loan above certain amounts, a copy of the required loan resolution or loan agreement should be obtained from and discussed with the District Director before the loan docket is developed. Among other things, this docket outlines how the income from the housing is to be used. These requirements should be understood at the time the budget is developed.

13. Management Plan

A detailed management plan will be developed which will outline the basic policies and procedures to be followed, and the duties of the officers and employees.

14. Manager and Caretaker

The success of the housing will depend to a large extent on how well it is managed. A carefully written plan should be developed by the applicant outlining the proposed management of the housing and giving such information as who will be the manager, the manager's age and experience, any management training planned, and other facts about the manager's qualifications.

The manager should be readily available to the tenants.

The manager might be one of the occupants, or a member of the board of directors of a nonprofit corporation. A caretaker may be needed for larger projects to:

- Take care of minor repairs.
- Mow the lawns and maintain the property, and
- Remove garbage and trash.

The board of directors of a corporation is responsible for overall supervision and management of all its affairs. The board should delegate actual operating and management responsibility to committees or individuals and meet often enough to see that the job is being done right and the enterprise is being managed successfully.

15. Occupancy Policies

Applicants should review carefully with the District Director the occupancy requirements. Particular attention should be given to the following requirements:

The housing must be open to all eligible occupants regardless of race, color, religion, sex, National origin, or marital status.

The incomes of tenants must be within the maximum income limits approved by FmHA, except for senior citizens or handicapped occupants of housing financed with insured loans.

Additional guidance concerning occupancy in congregate housing projects can be found in Exhibit A-8 of this handbook.

16. Rules and Regulations

The rules and regulations for tenants should be developed by the applicant and a copy included in the loan docket.

17. Lease

The applicant should develop a form of application for occupancy and lease agreement form. Copies of these forms should be included in the loan docket.

Review of the Complete Docket

When the applicant has developed the information needed to complete the loan docket, the applicant should furnish the information and discuss it with the District Director. Form AD-625, the information and materials listed in Exhibit A-7 plus FmHA forms provided by the District Director become the loan docket.

The District Director will submit this docket to the FmHA State Director for consideration. The State Director will send dockets for large projects to the FmHA National Office in Washington, D.C., for review.

The docket will be reviewed and returned to the District Director. A letter from the State Director will indicate any special

requirements that need to be met before loan approval or loan closing. Complete final plans and specifications and firm trade-item cost estimates will be obtained before the loan can be approved. In some cases competitive bidding will be required to determine actual construction cost. In the case of multiple advances of FmHA loan funds for construction, the note and mortgage will be signed by the applicant and the loan funds deposited in a joint bank account at loan closing. At this time the applicant becomes a borrower. The loan funds are disbursed from the bank account as needed, by checks signed jointly by the borrower and the District Director. Checks on the account must be signed by the borrower and countersigned by the FmHA District Director.

If interim financing is available during the construction period at reasonable rates and terms, FmHA can make a conditional commitment to the interim lender that will loan the funds to finance the construction of the project. The commitment will be conditioned upon acceptable performance by the builder and payment of all construction bills. After the conditions have been met, the FmHA loan will be closed to pay off the interim construction indebtedness. Draws of interim loan funds will be made only as needed, and will require the joint approval of the applicant and the FmHA District Director.

Construction

With the start of construction will come the first physical signs that the housing will become a reality. The construction period, however is a most critical period of time.

1. Starting Construction

Construction should not be started until after the FmHA loan is closed, or until the FmHA commitment has been made to the interim lender, as appropriate.

2. Competitive Bidding

Competitive bidding is recommended and may be required by FmHA in some cases. If required, the State Director's letter received after the loan docket has been reviewed and the loan authorized, will instruct the District Director to have the applicant or the applicant's architect/engineer complete the necessary bid documents.

The applicant and the architect/engineer should select competent contractors to bid on the housing. The architect/engineer should be sure contractors understand the plans and specifications, and other conditions.

If bids are within the estimates, the successful bidder will be selected and the contract for construction will be awarded. During construction the District Director, the applicant and the applicant's architect/engineer will inspect the work. Payment will be made from the FmHA loan funds, or interim loan funds, according to provisions in the contract.

3. Construction Without Competitive Bidding.

Where competitive bidding is not required, the loan docket will include reliable cost estimates or a firm offer to build from a builder selected by the applicant. A contract approved by FmHA will be executed by the applicant and the builder. If full architectural services are obtained by the applicant,

supervision and inspection of the work will be performed by the architect/engineer staff. The applicant and FmHA will also inspect the construction, and will have sole responsibility for doing this when an architect is not involved. Payment will be made to the contractor in accordance with the terms of the contract.

Open House

The applicant may wish to create interest in the housing and build up the list of prospective occupants by having a dedication ceremony. This will attract attention and acquaint the people of the locality with what the housing means to the community. This is especially recommended for housing developed by nonprofit corporations.

Exhibits

The following guides may be used when applicable and, if necessary, adopted to meet needs of application consideration.

Exhibit

- A-1. Legal Service Agreement.
- A-2. Survey of Existing Rental Housing.
- A-3. Rental Housing Survey.
- A-4. Rental Housing Survey Summary.
- A-5. Statement of Budget, Income, and Expense (excluding depreciation).

A-5(A). Housing Allowance for Utilities and Other Public Services.

A-6. Information to be Submitted with Preapplication for Rural Rental Housing (RRH) Loan.

A-7. Information to be Submitted with Application for Federal Assistance (Short Form).

A-8. Objective Guides to Assist Management in Determining the Ability of Tenants to Sustain Relative Independence.

A-8(A). Physical Self Maintenance Scale (PSMS).

A-8(B). Instrumental Activities of Daily Living Scale (IADL).

A-8(C). Index of Independence in Activities of Daily Living (ADL).

Legal Services Agreement

Agreement made this _____ day of _____, 19____ between the _____, hereinafter called the owners, and _____, hereinafter called the attorney, witnesseth:

Whereas the owners intend to form a nonprofit corporation, hereinafter called the corporation, to construct and operate a rural rental housing project in:

(Town) _____
(County) _____
(State) _____

and to obtain a loan from the Farmers Home Administration to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the Corporation, and to perform all other customary legal services necessary to the organization, financing, construction, and initial operation of the proposed rural rental housing project, such services to include but not to be restricted to the following:

1. Prepare and file necessary incorporating papers and supervise and assist in taking other necessary or incidental actions to create the Corporation and authorize it to

finance, construct, and operate the proposed housing project.

2. Prepare for, and furnish advice and assistance to the owners, and to the Board of Directors and officers of the Corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation of adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural rental housing project; (d) necessary construction contracts; (e) preparation of adoption of bylaws and related documents; (f) any other action necessary for organizing the Corporation or financing, constructing, and initially operating the proposed housing project.

3. Review of construction contract, bid-letting procedure, and surety and performance bonds.

4. Examination of real estate titles and preparation, review and recording of deeds and any other instruments.

5. Cooperation with the architect employed by the owners or the Corporation in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6. Rendering of legal opinions as required by the owners or the Corporation or the Farmers Home Administration, United States Department of Agriculture.

7. Owners agree to pay to the attorney for professional services in accordance with this agreement, as follows:

The fees to be payable in the following manner and at the following times:

The attorney states and agrees that of the above total fees, _____ represents fees for services in connection with the organization and incorporation of the Corporation.

The owners and the attorney further covenant and agree that, if upon organization and incorporation, the Corporation fails or refuses to adopt and ratify this Agreement by appropriate resolution within _____ days, this Agreement shall terminate and owners shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this _____ day of _____, 19____.

Attorney: _____
Owners: _____

BILLING CODE 3410-07-M

Exhibit A-3

Rental Housing Survey

A rental housing project is being planned for this community. The project would provide comfortable listing at reasonable rental rates. Your opinion on the following will help us to determine whether such a project is practical. This information does not obligate you in any way.

1. What age group are you in? 62 or over

☐ 50-62 ☐ Under 50 ☐

2. Marital status: Married ☐ Single

(including divorced or widowed) ☐

3. Are you or members of the household handicapped or impaired and in need of specially designed housing arrangements?

Yes ☐ No ☐

4. Number of person in your household:

1 or 2 ☐

6 to 8 ☐

4 to 6 ☐

Over 8 ☐

2 to 4 ☐

5. Annual income from all sources

(including any social security, retirement pension, payments made on behalf of minor children, public assistance, etc.):

Less than \$3,410 ☐

\$10,990-12,505 ☐

\$4,925-\$8,440 ☐

\$15,540-17,005 ☐

\$9,475-\$10,990 ☐

\$7,960-\$9,475 ☐

\$14,020-\$15,540 ☐

\$12,505-14,020 ☐

\$3,410-\$4,925 ☐

Over \$17,055 ☐

\$6,440-\$7,960 ☐

6. Do you own ☐ or rent ☐ present residence?

If you rent, what is your present rental rate? _____

7. Do you live in house ☐ Apartment ☐

Room ☐ On a farm ☐ In town ☐

8. Is your present housing modern ☐ Not modern, but adequate ☐ Inadequate ☐ If so, in what respect? _____

What amount of monthly rent can you pay if utilities are included?

Less than \$55 ☐

\$235-265 ☐

\$115-145 ☐

Over \$325 ☐

\$205-235 ☐

\$85-115 ☐

\$295-325 ☐

\$175-205 ☐

\$55-85 ☐

\$265-295 ☐

\$145-175 ☐

10. Would you want to maintain own yard () Flower garden ()

11. Would you be willing to move in if apartment was available _____, 19--? Yes () No ()

12. Name _____

Address _____

Telephone Number _____

13. Number of meals you would prefer to be prepared per day?—

14. What other services would you like to have available to you?

Yes

() No ()

a. Housekeeping Services?

b. Personal care services?

c. Social and recreational activities services?

d. Linen and laundry services?

e. Health and medical related services?

f. Beauty and barber services?

g. Transportation or access services?

h. Other

(Specify) _____

15. Type of building preferred:

1-story

2-story

More than 2-storys

16. List any hobbies or organizational membership you have.

BILLING CODE 3410-07-M

Exhibit A-4

Page 1

RENTAL HOUSING SURVEY SUMMARY

Item	Age - Head of Household		
	62 or over	50 to 62	Under 50
<u>Marital Status:</u>			
Married			
Single			
<u>Handicapped:</u>			
Yes			
No			
<u>Household Size (Bedrooms Needed)</u>			
1 or 2 persons (1 bedroom)			
2 to 4 persons (2 bedrooms)			
4 to 6 persons (3 bedrooms)			
6 to 8 persons (4 bedrooms)			
<u>Annual Income:</u>			
Less than \$3,410			
\$3,420 - 4,925			
\$4,925 - 6,440			
\$6,440 - 7,960			
\$7,960 - 9,475			
\$9,475 - 10,990			
\$10,990 - 12,505			
\$12,505 - 14,020			
\$14,020 - 15,537			
\$15,537 - 17,053			
Over \$17,053			
<u>Present Housing:</u>			
House			
Apartment			
Room			
Rent			
Own			
Modern			
Not modern, but adequate			
Inadequate			

Exhibit A-4
Page 2

RENTAL HOUSING SURVEY SUMMARY

Item	Age - Head of Household		
	62 or over	50 to 62	Under 50
Rent:			
Less than \$55			
\$55-85			
\$85-115			
\$115-145			
\$145-175			
\$175-205			
\$205-235			
\$235-265			
\$265-295			
\$295-325			
Over \$325			
Willing to move into Housing when completed:			
Yes			
No			

o0o

Exhibit A-4

Page 3

RENTAL HOUSING SURVEY GRAPHICAL DISPLAY

		Annual Income (Adjusted Annual Income with 2 minors)										
Rent Willing To Pay		Less than \$3,410 (\$2,640)	\$3,410 - 4,925 (\$2,640 - 4,080)	\$4,925 - 6,440 (\$4,080 - 5,520)	\$6,440 - 7,960 (\$5,520 - 6,960)	\$7,960 - 9,475 (\$6,960 - 8,400)	\$9,475 - 10,990 (\$8,400 - 9,840)	\$10,990-12,505 (\$9,840-11,280)	\$12,505-14,020 (\$11,280-12,720)	\$14,020-15,540 (\$12,720-14,160)	\$15,540-17,055 (\$14,160-15,600)	Over \$17,055 (\$15,600)
Less than \$55												
\$55-85												
\$85-115												
\$115-145												
\$145-175												
\$175-205												
\$205-235												
\$235-265												
\$265-295												
\$295-325												
Over \$325												

1. Respondents falling below and to the left of the heavy line could perhaps benefit from FmHA rental Assistance or HUD Section 8 since they are willing to pay more than 25 percent of their adjusted monthly income for the costs of rent and utilities.

2. Respondents, in the middle boxes would be willing to pay 25 percent of their adjusted monthly income for the costs of rent and utilities.

3. Respondents above and to the right of the diagonal boxes are not willing to pay 25 percent of their adjusted months income for the cost of rent and utilities.

4. Respondents in the right column are not likely eligible for occupancy.

Exhibit A-5

STATEMENT OF BUDGET, INCOME, AND EXPENSE (Excluding Depreciation)

Name of Borrower _____
 Address _____
 Project Location _____
 Kind of Loan _____ Term of Loan _____ Interest Rate _____ Amount \$ _____

Budget(prior yr.) Actual(prior yr.) Basic Rent Market Rent
 Basic (interim yr.) or Mkt. (interim) Budget Budget

Income From Rent

No. & Kind	Per Month Basic Mkt.	Beg _____	Beg _____	Beg _____	Beg _____
		End _____ (1)	End _____ (2)	End _____ (3)	End _____ (4)
1 _____ units @ _____					
2 _____ units @ _____					
3 _____ units @ _____					
4 _____ units @ _____					
5 Less Allowance for Vacancy and Contingencies as Authorized by FmHA		()	()	()	()
6 Total Income from Rent					
Other Income					
7 Laundry					
8 Interest Income					
9 Other (specify)					
10 Total Other Income (Add Lines 7 through 9)					
11 Total Income (Add Lines 6 and 10)					
12 Total Operation, Maintenance and other Expenses					
13 Net Income (Loss) (excluding depreciation) (Line 11 less Line 12)					
Other Deductions					
14 FmHA Payment					
15 Transfer to Reserve					
16 Return to Owner					
\$ _____ @ _____ %					
17 Authorized Capital Imp.					
18 Other Authorized Debt Payments					
19 Other (specify)					
20 Total Other Deductions (Add Lines 14 thru 19)					
21 Excess (Deficit) (Line 13 Less Line 20)					

Certified Correct

 (date)

by

 Borrowers or Borrower's
 Representative Signature

APPROVED BY FARMERS HOME ADMINISTRATION:

Name	Title	Signature	Date
------	-------	-----------	------

Exhibit A-5

Page 2

OPERATION AND MAINTENANCE
EXPENSES:

	(1)	(2)	(3)	(4)
1. <u>Salaries and Wages</u>	\$ _____	\$ _____	\$ _____	\$ _____
Caretaker	\$ _____	\$ _____	\$ _____	\$ _____
Manager				
2. <u>Utilities</u>				
Water	\$ _____	\$ _____	\$ _____	\$ _____
Sewer	\$ _____	\$ _____	\$ _____	\$ _____
Gas	\$ _____	\$ _____	\$ _____	\$ _____
Electricity	\$ _____	\$ _____	\$ _____	\$ _____
Heating	\$ _____	\$ _____	\$ _____	\$ _____
Garbage and Trash Removal	\$ _____	\$ _____	\$ _____	\$ _____
Telephone	\$ _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____	\$ _____
3. <u>Maintenance</u>	\$ _____	\$ _____	\$ _____	\$ _____
Janitor's Supplies	\$ _____	\$ _____	\$ _____	\$ _____
Repairs	\$ _____	\$ _____	\$ _____	\$ _____
Building Equipment Repairs	\$ _____	\$ _____	\$ _____	\$ _____
Exterminating	\$ _____	\$ _____	\$ _____	\$ _____
Decorating	\$ _____	\$ _____	\$ _____	\$ _____
Grounds Maintenance				
Furniture & Furnishings				
Replacements	\$ _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____	\$ _____
4. <u>Insurance</u>				
Fire and Extended Coverage	\$ _____	\$ _____	\$ _____	\$ _____
Liability	\$ _____	\$ _____	\$ _____	\$ _____
Compensation	\$ _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____	\$ _____
5. <u>Taxes</u>				
Real Estate	\$ _____	\$ _____	\$ _____	\$ _____
Social Security	\$ _____	\$ _____	\$ _____	\$ _____
Special Assessments	\$ _____	\$ _____	\$ _____	\$ _____
Income	\$ _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____	\$ _____
6. <u>Other Expenses</u>				
Accounting	\$ _____	\$ _____	\$ _____	\$ _____
Legal	\$ _____	\$ _____	\$ _____	\$ _____
Advertising	\$ _____	\$ _____	\$ _____	\$ _____
Interest (not included in Line 14)	\$ _____	\$ _____	\$ _____	\$ _____
Other _____	\$ _____	\$ _____	\$ _____	\$ _____
7. <u>Total Operation and Maintenance Expenses (Add Section 1 thru 6) (Total to line 12 Front Side)</u>	\$ _____	\$ _____	\$ _____	\$ _____

Exhibit A-5

Page 3

INSTRUCTION FOR PREPARATION(1) When used by loan applicant.

- (a) Column (1) will be completed to reflect the proposed basic rent (1%) budget (if applicable) for the interim or partial year.
- (b) Column (2) will be completed to reflect the proposed market rent budget for the interim or partial year.
- (c) Column (3) will be completed to reflect the proposed basic rent (1%) budget (if applicable) for a full 12 months of operation (typical year).
- (d) Column (4) will be completed to reflect the proposed market rent budget for a full 12 months of operation (typical year).

oOo

Exhibit A-5A

Page 1

HOUSING ALLOWANCES FOR
UTILITIES AND OTHER PUBLIC SERVICES

NAME OF BORROWER

LOCATION AND IDENTIFICATION OF PROJECT

Part I

Monthly Dollar Allowances

UTILITY OR SERVICE	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR
HEATING						
a. Natural Gas						
b. Bottle Gas						
c. Oil						
d. Electric						
AIR CONDITIONING						
COOKING						
a. Natural Gas						
b. Electric						
c. Bottle Gas						
OTHER ELECTRIC LIGHTING, REFRIGERATION, ETC.						
WATER HEATING						
a. Natural Gas						
b. Electric						
c. Bottle Gas						
d. Oil						
WATER						
SEWER						
TRASH COLLECTION						
OTHER (Specify)						
TOTAL ALLOWANCE (Round to next highest dollar)						

PREPARED BY:

Borrower or Agent

Title

Signature

Date

APPROVED BY FARMERS HOME ADMINISTRATION

Name

Title

Signature

Date

Exhibit A-5A
Page 2

HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

PART II

BLOCK A		BLOCK B	
TO: _____ Name of Tenant		ALLOWANCE FOR UTILITIES AND SERVICES BILLED DIRECTLY TO AND PAID BY TENANT	
Address of Tenant			Per Month
No. of Bedrooms _____		Heating.....	\$ _____
You will be billed directly for utilities and service charges. Block B sets forth the allowances credited in your rent for the payments of utilities. You may be billed for more or less than shown in Block B depending on your use of utilities.		Air Conditioning.....	_____
		Cooking.....	_____
		Other Electric.....	_____
		Water Heating.....	_____
		Water.....	_____
		Sewer.....	_____
		Trash Collection.....	_____
		Other (Specify).....	_____
		_____
Signature of Borrower or Agent _____		TOTAL (Round to next highest dollar) \$ _____	
Date _____			

BILLING CODE 3410-07-C

Instructions for Preparation and Use of Housing Allowances for Utilities and Other Public Services

I General. These instructions are for completing Exhibit A-5A for the establishment and use of approved utility allowances for tenants. The objective shall be to establish allowances at levels that will apply to the majority of the household assigned to the proper size unit.

II Determining Allowances.

A Existing Construction. The borrower shall provide information which shows the utility bills and fees for public services which have been charged to units in the project in previous years. If possible, this historical data should cover a period of at least 24 months and should show billings to all types and sizes of units in the project. If data is not available on the specific project, data from similar projects may be substituted. Consideration should be given to making proper adjustments in the data caused by some tenants' excessive use of utilities. Current rate schedules and known rate increases shall be used to estimate utility allowances. The following local sources should be contacted as appropriate:

- 1 Electric utility suppliers
- 2 Natural gas utility suppliers
- 3 Water and sewer suppliers
- 4 Fuel oil and bottle gas suppliers
- 5 Public service commissions
- 6 Real estate and property management firms
- 7 State and local agencies including public housing authorities

In those cases where a project utilizes a single meter for more than one living unit or where a single fuel supply or heating or cooling plant is used for more than one unit, the following factors shall be used to determine the pro rata share of utility costs or public service fees per living unit:

Size of unit	Factor
0-BR.....	0.5
1-BR.....	0.7
2-BR.....	0.9
3-BR.....	1.1
4-BR.....	1.4
5-BR.....	1.6

Example: An eightplex structure containing four one-bedroom apartments and four two-bedroom apartments has an average annual consumption of 42,000 kilowatt-hours of electricity. Allowance per unit is calculated thus:

Four (one-bedroom) @ .7 = 2.8
Four (two-bedroom) @ .9 = 3.6
Total 6.4

total use	×	cost per kilowatt-hour (kwh)—average billing
total of factors		(assume \$.04 per kwh)
42,000	×	.04 = 262.50
6.4		
unit factor	×	average billing = unit allowance
(one bedroom) .7	×	262.50 = \$183.75/yr.
(two bedroom) .9	×	262.50 = \$236.25/yr.

B. New Construction. The applicant with assistance from the applicant's architect, mechanical engineer or other heating and cooling system specialists shall provide heating and cooling load calculations for each type and size of unit. Heating and/or cooling costs shall be calculated from these load factors using current rate schedules and known rate increases. Procedures described in the American Society of Heating, Refrigeration and Air Conditioning Engineers "Handbook of Fundamentals," the National Association of Homebuilders "Insulation Manual Home, Apartments" or other recognized authority may be used.

General appliance and lighting loads and fees for public services should be estimated using data from the local utility companies and from other sources listed in paragraph II A above.

C. Type of Allowances. 1. Separate heating and cooling allowances shall be established for the various types of multiple family housing financed by FmHA in the project. For example, separate allowances may be needed for duplexes, row or townhouses, garden and low and medium rise apartments. In addition to establishing different heating and cooling allowances for various types of structures, attention should be given to different allowances for water depending on whether tenants will have responsibilities for lawn care.

2. Allowances for air-conditioning shall be established only for those projects in which the owner furnishes a central air-conditioning system or other type unit as a part of the permanent equipment.

3. The cost of gas and electricity varies according to amounts consumed as shown on the appropriate rate schedules of the supplier. It is not possible to compute exactly the cost of electricity for any given function without knowing the total electrical usage for a unit. However, because neither the borrower nor the families know beforehand just what will be the combination of utilities for any unit rented, it will be necessary to approximate the allowances for each function (e.g., heating, cooking, etc.) as follows: For electricity the rates used for lighting, refrigeration, and appliances should be from the top of the rate schedule or the higher unit costs. Allowances for electric cooling, water heating, and space heating should be computed from the middle or lower steps in the rate schedules. Similarly, allowances for gas used for water heating and cooking should be computed using rates from the top of the rate schedule and for heating from the lower steps.

III. Preparation By Borrower or Applicant.

A. Applicable Projects. Except for projects operating on a profit basis, Exhibit A-5A will be completed in the original and three copies in all instances where the tenants pay

utilities or authorized services directly.

Where the borrower pays all utilities, Part I of Exhibit A-5A may also be required as part of the budget submitted for any new project if the loan approval official determines it is needed to properly evaluate projected utility costs. This form will establish the allowances for all size units in the project. The allowance shall be adequate for all utilities and any authorized services which are or will be payable directly by the tenants, except telephone and cable TV. The forms will be signed by the borrower. The original and two copies of the form will be submitted to FmHA. Back-up data and necessary documentation should be included with the submission.

B. Submission of Supporting Data to FmHA. The applicant will submit to FmHA adequate data to justify the utility allowance for the project. The data will include the following:

1. Completed Exhibit A-5A.
2. List of local sources contacted for information and copies of any data provided by such sources.
3. Any data on allowances already established for the area.
4. Complete narrative statement and computations on method used in arriving at the allowances.

IV. Actions by FmHA. If FmHA finds the allowances acceptable, the approval portion of Part I will be completed on all copies and the original and one copy returned to the District Director. The District Director will keep a copy for the District Office file and return the original to the borrower. If the proposed utility allowance is unacceptable, the borrower will be requested to revise the data and resubmit it for further consideration.

V. Subsequent Action by Borrower. After approval by FmHA the borrower will complete Part II of the form and provide copies for each tenant paying utilities directly by attaching it to the lease entered into by the borrower and tenant. The form will provide the household with the amount of allowance for each of the utilities and services which is to be paid by the tenant. If all utilities and services are paid by the borrower, Exhibit A-5A need not be attached to the lease.

Information To Be Submitted With Preapplication for Rural Rental Housing (RRH) Loan

The following information is to be submitted with Form AD-621, "Preapplication For Federal Assistance":

1. **Eligibility.** a. Financial Statement—Each applicant must submit a current, dated, and signed financial statement, showing assets and liabilities, with information on the status and repayment of each debt. If the applicant is a corporation other than a non profit corporation or a trust, a current financial statement will be required from each member, stockholder or beneficiary who holds an interest in the organization in excess of 10 percent. A dated and signed financial statement will be required of all general partners or trustees who hold an interest in a partnership or trust. A dated and signed certificate is required of each limit partner in a limited partnership, certifying to the

approximate net worth of the limited partner. In any case which a financial statement is required from an individual, it will also include the financial interests and signature of the spouse. The applicant must have initial operating capital and other assets needed for a sound loan. The initial operating capital required will amount to at least 2 percent of the total cost of the project to cover these costs. Loan funds may be included in the loan to pay the initial operating expense up to 2 percent of the development cost for nonprofit organizations and State and local public agencies. The applicant must also possess sufficient cash or land to meet any equity or development requirements. If the applicant is an organization which has not been formed at the time of filing the preapplication, the financial statements for the proposed general partners, stockholders, members, or beneficiaries must collectively (and in proportion to the proposed ownership interest of each) reflect sufficient cash or other liquid assets to meet any equity capital and initial operating capital requirement of the applicant organization. Prior to loan approval, however, the applicant must be legally organized and must submit a financial statement meeting these requirements. All financial statements and certificates approximate net worth submitted in fulfillment of these requirements must contain the following statement immediately preceding the signature line:

"(I) or (we) certify the above and the statements contained herein are a true and accurate statement of (my) or (our) financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan as requested in the loan preapplication or application of which this statement is a part."

b. Evidence Concerning the Test for Other Credit—Applicants other than State or local public agencies are responsible for showing not only that they are credit worthy, but that other credit is not available at rates and terms that will enable the rental units to be rented to eligible tenants at rental rates within their payment ability. Applicants other than State or local public agencies should provide letter from other local real estate lenders evidencing the amount of loan funds they are willing to extend, the rates and terms at which the loans would be available, and if credit is not available, the reasons why other lenders are not willing to extend credit.

c. Statement of applicant's experience in operating rental housing and related business—with a statement on the proposed method of operation and management.

d. For an Organization Applicant—A copy of or an accurate citation to the specific provisions of State law under which the applicant is or is to be organized; a certified copy of the applicant's actual or a copy of the applicant's proposed charter, Articles of Incorporation, Bylaws, partnership agreement, certificate of limited partnership, or other basic authorizing documents; the names and addresses of the applicant's members, directors, and officers; and if a member of subsidiary of another organization, its name, address, and principal business, if available.

e. A written, dated, and signed statement from the applicant stating the following:

"(I) or (we) understand and agree that the Farmers Home Administration (FmHA) will consider an identity of interest to exist between the loan applicant as the party of the first part and general contractors, architects, engineers, attorneys, interim lenders, subcontractors, material suppliers, or equipment lessors as parties of the second part under any of the following conditions: (1) When there is any financial interest of the party of the first part in the party of the second part; (2) when one or more of the officers, directors, stockholders, or partners of the party of the first part is also an officer, director, stockholder, or partner of the party of the second part; (3) when any officer, director, stockholder, or partner of the party of the first part has any financial interest whatsoever in the party of the second part; (4) when the party of the second part advances any funds to the party of the first part other than an interim lender advancing funds to enable the applicant to pay for construction and other authorized and legally eligible expenses during the construction period; (5) when the party of the second part provides and pays on behalf of the party of the first part the cost of any legal services, architectural services, engineering services, or interim financing other than those of a survey, general superintendent, or engineer employed by a general contractor in connection with obligations under the construction contract; (6) when the party of the second part takes stock or any interest in the party of the first part as part of the consideration to be paid them; and (7) when there exists or comes into being any side deals, agreements, contracts, or undertakings entered into thereby altering, amending, or cancelling any of the required closing documents or approval conditions as approved by FmHA. (I) or (we) certify that there is not now, nor will there be an identity of interest between or among the applicant, contractor, architect, engineer, attorney, interim lender, subcontractors, material suppliers, equipment lessors, or any of their members, directors, officers, stockholders, partners, or beneficiaries without prior written identification to FmHA and written consent to such identity of interest by FmHA. This statement is given for the purpose of inducing the United States of America to make a loan as requested in the loan preapplication or application of which this statement is a part."

2. *Need and Demand:* a. A realistic estimate of need and demand for the number of living units of the type proposed, based on the availability of rental housing and the number of eligible tenants living in the community and its trade area willing and able to pay the proposed rental rates. Applicants for loans to provide congregate housing with central dining area or space for support services including housing involving a group living arrangement, must furnish a narrative statement from local, State, and government agencies supporting the current and long-range need for such facilities by the handicapped in the community and its trade area.

b. A schedule of proposed rental rates, and in the case of congregate housing proposal, a separate schedule listing the proposed cost of any non-shelter services to be provided.

3. *Site:* a. Size of tract, and a plat map identifying its boundaries.

b. A map showing the location and other supporting information on its neighborhood and existing facilities, such as distance to shopping area, neighborhood churches, schools, available transportation, drainage, sanitation facilities, water supply, and access to essential services such as doctors, dentists, pharmacies, and hospitals.

c. A copy of the applicant's deed or option to purchase.

4. *General Description of the Housing Planned* including the following:

a. Schematic design drawings showing the proposed plot plan, typical unit plans, and elevation. If available, the proposed preliminary drawings and specifications may be submitted.

b. Type of construction.

c. Summary of the estimated total development cost of the entire project, separately identifying the cost (or value in the case of land owned by the applicant) associated with the following items of development: General construction, electrical, plumbing, heating/cooling, excavating and trenching, site development (including landscaping), land, pro-rated share of any off-site development, interest during construction, architectural/engineering fees, legal and/or closing costs, and any other itemized costs.

d. The total number of living units and the number of each type of living unit proposed.

e. Type of utilities such as water, sewer, gas, and electricity and whether each is public, community, or individually owned.

f. Form FmHA 449-10, "Applicant's Environmental Impact Evaluation."

Exhibit A-7.—Information To Be Submitted With Application for Federal Assistance (Short Form)

The following information is to be submitted with Form AD-625, "Application for Federal Assistance (Short Form)":

1. A plot plan, detailed preliminary plans and specifications and any special design features for senior citizens or handicapped persons.

2. A detailed trade-item cost breakdown of the project for such items as land and right-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and both on- and off-site improvements. The cost breakdown also should show separately the items not included in the loan, such as furnishings and equipment. This trade-item cost breakdown should be updated just prior to loan approval.

3. Information on the method of construction, on the proposed contractor if a construction contract is to be negotiated and on the architectural, engineering, and legal services to be provided.

4. Satisfactory evidence of review and approval of the proposed housing by applicable State and local officials whose approval is required by State or local laws, ordinances, or regulations.

5. A market survey report which should be based on the number of eligible occupants in the area who are willing and financially able to occupy the housing at the proposed rental levels. The economic justification for the

housing and the size of the project should be based primarily upon the housing need and demand from eligible prospective occupants who are permanent residents of the community and its surrounding trade area. Permanent residents include those eligible residents of the community that are civilian employees or military personnel of any military installation that may be located within the trade area of the community. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, demand from the more temporary residents of a community (such as college students in a college town) should be discounted in determining project size. A market survey report will include:

a. For a proposed project which will contain 10 or fewer units and will be in a community where an effective demand for rental housing obviously exists, statements supported by statistical data describing and explaining the basis for expecting a continued effective demand for the rural rental housing over the period of the loan. Such information may be assembled from census reports, county market evaluations made by the Department of Housing and Urban Development and other published data that shows the number of occupants living in the town or trade area who are eligible to occupy the proposed housing and the condition of the housing they occupy. This information will be used to help determine the maximum number of rental units that may be financed.

b. For a proposed project that will include more than 10 units and for any smaller project where there is any doubt concerning the demand, a complete rental housing market analysis showing the need and demand for rural rental housing in the area based on the best information available. It will include:

(1) An estimate of number of houses or apartments in the area for rent or sale. Exhibit A-2 or a similar form should be used for this purpose.

(2) Characteristics of available rental housing such as location, quality and size of unit, type of building, age of structure, house value, tenure, vacancy rate, nature of vacancies, and price or rental levels.

(3) Characteristics of the persons eligible for occupancy of the proposed housing, such as single or couple, size of household, number of senior citizens, nonsenior citizens or handicapped persons, and income financial condition.

(4) Present living arrangements of eligible occupants in the area and the extent to which inadequate housing is associated with health or financial reasons.

(5) Estimate of the number of eligible occupants who are willing and financially able to occupy the proposed housing.

(6) In the case of a proposal involving congregate housing, with central dining area, space for support services, or housing involving a group living arrangement, a narrative statement from local, State, and/or Federal Government agencies supporting the current and long-range need for such facilities in the community and its trade area.

c. If the housing is located in an area where there are relatively few eligible occupants, or

for any other reason there is a question as to whether the housing will be fully occupied, signed expressions of interest in occupancy from a sufficient number of eligible occupants will be obtained so as to clearly indicate that full occupancy will occur soon after construction is completed. Exhibit A-3 or a similar form may be used for this purpose.

d. The applicant will provide a written, signed certification that the information provided in the market study is true and accurate.

6. A current dated and signed financial statement showing the debt structure of the applicant. (See item 1a of Exhibit A-6)

7. Detailed operating budgets, showing a schedule of proposed rental rates, for the first year's operation and a typical year's operation. The first year's budget should show that the applicant has sufficient operating capital on hand or sufficient planned income to pay all operating costs and meet scheduled payments on debts during the planning and construction period prior to occupancy. The typical year's budget should show there will be ample income to pay essential operating costs, meet required debt payments, and permit accumulation of required reserves. Exhibits A-5 and A-5A or similar forms may be used for this purpose. The operating budgets should be updated if necessary just prior to loan approval.

a. The initial budgets should include an allowance of 10 percent for vacancies, nonpayment of rent, and contingency expense. Projects being developed utilizing HUD's Section 8 Housing Assistance Payments program for new construction may use a lower rate; however, in no case should the allowance be less than 5 percent. The allowance in subsequent year budgets may be adjusted to be consistent with the actual past experience in vacancy, nonpayment of rent and contingency needed for the project.

b. The budgets should provide for accumulating a reserve at the rate of one percent per annum of the value of the buildings and related facilities financed wholly or partially with the loan until a reserve equal to 10 percent of their value is reached. Budgets should not include an additional item for depreciation since the purpose of a reserve percent is to provide funds for this purpose.

c. All applicable taxes, including Federal and any State income taxes, should be included in the budgets and separately identified. If the applicant considers itself tax-exempt, evidence of exemption must be included in the loan docket before the loan is closed. In case of a nonprofit organization whose articles or incorporation and bylaws conform to Exhibits E and F of Subpart E, evidence of exemption from Federal income tax need not be obtained before the loan is closed if the applicant applies for a determination of exemption and agrees in writing to make any changes in its organizational documents that may be required by the Internal Revenue Service (IRS). Information as to Federal income tax exemption may be obtained from the District Office of the IRS. An eligible nonprofit organization should ordinarily be able to qualify for Federal income tax exemption under section 501 (c)(4) of the Internal Revenue Code.

8. A description and justification of any related facilities (including but not limited to workshops, community buildings, recreation center, central cooking and dining facilities, or other similar facilities to meet essential needs) to be financed wholly or in part with loan funds.

9. A statement in narrative form outlining the proposed manner of management of the housing, such as whether by owner or by hired management firm or agent. Experience and other factors pertaining to the qualifications of the manager should be set forth and will be taken into consideration. If management will be performed by a hired management firm or agent a copy of the proposed management agreement should be submitted. It must contain the clause indicating that it is not in full force and effect and until approved by FmHA.

10. A management plan which sets forth clear and concise statements of policy concerning management and operation of the project. An acceptable management plan should be responsive in depth to each of the following applicable areas: (a) The role and responsibility of the owner, and the owner's relations and delegations of authority to the management agency; (b) personnel policy and staffing requirements (including the duties and responsibilities of the owner, management agency, and each staff person or employee; (c) plans and procedures for marketing units, and for achieving and maintaining full occupancy; (d) procedures for determining and verifying tenant eligibility, selecting tenants (including any tenant priorities in a congregate housing project), and for certifying and recertifying tenant eligibility and income; (e) plans for carrying out an effective maintenance and repair program; (f) rent collection policies and procedures; (g) program for maintenance of adequate accounting records and handling necessary forms and vouchers; (h) plans for resident-management relations; (i) plans for meeting social and economic problems of the residents on an ongoing basis (including any non-shelter services to be provided in a congregate housing project); and (j) plans for security measures. In addition, attached to the management plan should be a copy of the proposed application for admission, waiting lists, lease or rental agreement, and rules and regulations governing administration and occupancy.

11. A schedule of any separate charges for the use of any related facilities, and in the case of congregate housing, a schedule of any separate charges for non-shelter services (such as meals, personal care, and housekeeping). These schedules should be supported by appropriate operating budgets for services to be provided.

12. When land is being purchased or a building site will be part of a tract owned by the applicant, or in any other case when necessary to clearly identify the property, a satisfactory survey of the land to be given as security prepared by a licensed surveyor will be included in the loan docket. If necessary, a new survey will be obtained.

13. An affirmative fair housing market plan on Form HUD 935.2 or the applicant must provide evidence of being a signatory to a voluntary affirmative marketing agreement

approved by the Department of Housing and Urban Development. (See FmHA Instruction 1901-E, specifically § 1901.203.) The affirmative fair housing marketing plan must be prepared in a complete, meaningful, responsive, and detailed manner.

Exhibit A-8.—Objective Guides To Assist Management in Determining the Ability of Tenants To Sustain Relative Independence

In providing housing for senior citizens and handicapped persons, especially when that housing is provided in the form of congregate housing or housing involving group living arrangements, there is a critical dimension of occupancy that must be considered by the project management when selecting, placing, certifying and recertifying tenants. This dimension concerns the ability of tenants with functional impairments to sustain relative independence given the supportive services provided in the project.

No matter how well meaning management might be in trying to provide housing or those tenants that have become ill or acutely impaired, rural rental housing apartment projects are designed for occupancy by tenants who are capable of caring for themselves. In a similar sense, congregate housing is designed for occupancy by those who are fully capable of living totally independent lives as well as those who are able to sustain relative independence given the non-shelter supportive services provided in the project. When management provides additional types of non-shelter support services to counteract the progressive functional impairments that prohibit tenants from being able to function on a semi-independent basis, it only makes those tenants more dependent on project management. Over time, this increased dependency has the effect of creating an "institution," and it runs contrary to the congregate housing objective of enabling tenants that are functionally impaired (but not ill) to sustain relatively independent lives.

Physicians, or state or local agencies responsible for providing non-shelter supportive services to the tenants, can assist project managers by providing certificates or statements concerning the degree of a tenant's functional impairment. This information can be used by project management to assess the tenant's ability to remain independent with an assist from the services provided in the project.

In addition, there are several other more technical and scientifically developed scales of competence that can be used by the project management to assess a tenant's capacity for personal care, capacity for continued living in the housing project, or competence in the activities of daily living. The Physical Self Maintenance Scale (Exhibit A-8A) may be used by project management to measure a person's capacity for personal care. The Instrumental Activities of Daily Living Scale (Exhibit A-8B) may be used by project management to measure a person's capacity for continued living in the "community" of the housing project and the Index of Independence Activities of Daily Living (Exhibit A-8C) may be used by project management to measure the relationship of functional capacity to the accomplishment of

daily activities. These scales should be used by project management only when absolutely necessary.

It is extremely important that project management understand that these scales are tools available for use by the management and not for the use of or completion by tenants or prospective tenants. Project managers may gather the information necessary to complete any one of these scales of competence through a variety of methods, including tactful interviews or conversations with the tenants, friends or relatives, or by any other appropriate means. Under no circumstances, however, it is appropriate to give the scale to a tenant or prospective tenant to complete, or to read it to a tenant or prospective tenant as a questionnaire would be. Assessments must be made by project managers in such a way that tenants and prospective tenants are not made to feel humiliated, degraded or embarrassed in the process.

Exhibit A-8A

Physical Self Maintenance Scale (PSMS)

Name _____
Rated by _____
Date _____

A. Toilet

1. Cares for self at toilet completely, no incontinence.
2. Needs to be reminded or needs help in cleaning self, or has rare (weekly at most) accidents.
3. Soiling or wetting while asleep more than once a week.
4. Soiling or wetting while awake more than once a week.
5. No control of bowels or bladder.

B. Feeding

1. Eats without assistance.
2. Eats with minor assistance at meal times and/or with special preparation of food, or help in cleaning up after meals.
3. Feeds self with moderate assistance and is untidy.
4. Requires extensive assistance for all meals.
5. Does not feed self at all and resists efforts of other to feed.

C. Dressing

1. Dresses, undresses and selects clothes from own wardrobe
2. Dresses and undresses self, with minor assistance.
3. Needs moderate assistance in dressing or selection of clothes.
4. Needs major assistance in dressing, but cooperates with efforts of others to help.
5. Completely unable to dress self and resists efforts of others to help.

D. Grooming (Neatness, Hair, Nails, Hands, Face, Clothing)

1. Always neatly dressed, well-groomed, without assistance.
2. Grooms self adequately with occasional minor assistance, e.g. shaving.
3. Needs moderate and regular assistance or supervision in grooming.
4. Needs total grooming care, but can remain well-groomed after help from others.

5. Actively negates all efforts of others to maintain grooming.

E. Physical Ambulation

1. Goes about grounds or city.
2. Ambulates within residence or about one block distant.
3. Ambulates with assistance of (check one)
 - a. another person—
 - b. railing—
 - c. cane—
 - d. walker—
1. —gets in and out without help.
2. —needs help in getting in and out.
4. Sits unsupported in chair or wheelchair, but cannot propel self without help.
5. Bedridden more than half the time.

F. Bathing

1. Bathes self (tub, shower, sponge bath) without help.
2. Bathes self with help in getting in and out of tub.
3. Washes face and hands only, but cannot bathe rest of body.
4. Does not wash self but is cooperative with those who bathe.
5. Does not try to wash self, and resists efforts to keep clean.

Reprinted by permission, from Co-Authors M. Powell Lawton and Elaine M. Brody Philadelphia Geriatric Center, Philadelphia, PA

Exhibit A-8B

Instrumental Activities of Daily Living Scale (IADL)

Name _____
Rated by _____
Date _____

A. Ability To Use Telephone

1. Operates telephone on own initiative—looks up and dials numbers, etc.
2. Dials a few well-known numbers.
3. Answers telephone but does not dial.
4. Does not use telephone at all.

B. Shopping

1. Takes care of all shopping needs independently.
2. Shops independently for small purchases.
3. Needs to be accompanied on any shopping trip.
4. Completely unable to shop.

C. Food Preparation

1. Plans, prepares and serves adequate meals independently.
2. Prepares adequate meals if supplied with ingredients.
3. Heats and serves prepared meals, or prepares meals but does not maintain adequate diet.
4. Needs to have meals prepared and served.

D. Housekeeping

1. Maintains house alone or with occasional assistance (e.g. "heavy work-domestic help").
2. Performs light daily tasks such as dish-washing, bed-making.

3. Performs light daily tasks but cannot maintain acceptable level of cleanliness.
4. Needs help with all home maintenance tasks.
5. Does not participate in any housekeeping tasks.

E. Laundry

1. Does personal laundry completely.
2. Launders small items—rinses socks, stockings, etc.
3. All laundry must be done by others.

F. Mode of Transportation

1. Travels independently on public transportation or drives own car.
2. Arranges own travel via taxi, but does not otherwise use public transportation.
3. Travels on public transportation when assisted or accompanied by another.
4. Travel limited to taxi or automobile with assistance of another.
5. Does not travel at all.

G. Responsibility for Own Medication

1. Is responsible for taking medication in correct dosages at correct time.
2. Takes responsibility if medication is prepared in advance in separate dosages.
3. Is not capable of dispensing own medication.

H. Ability To Handle Finances

1. Manages financial matters independently (budgets, writes checks, pays rent and bills, goes to the bank), collect and keep track of income.
2. Manages day-to-day purchases, but needs help with banking, major purchases, etc.
3. Incapable of handling money.

Reprinted, by permission from Co-Authors M. Powell Lawton and Elaine M. Brody—Philadelphia Geriatric Center, Philadelphia, PA.

Exhibit A-8C.—Index of Independence in Activities of Daily Living Scale (ADL)

Table 1. Evaluation Form

Name _____
Day of evaluation _____
For each area of functioning listed below, check description that applies. (The word "assistance" means supervision, direction, or personal assistance).

Bathing—Either Sponge Bath, Tub Bath, or Shower

- ☐ Receives no assistance (gets in and out of tub by self if tub is usual means of bathing).
- ☐ Receives assistance in bathing only one part of the body (such as back or a leg).
- ☐ Receives assistance in bathing more than one part of the body or not bathed.

Dressing—Gets Clothes From Closets and Drawers—Including Underclothes, Outer Garments and Using Fasteners (Including Braces if Worn)

- ☐ Gets clothes and gets completely dressed without assistance.
- ☐ Gets clothes and gets dressed without assistance except for assistance in tying shoes.

- ☐ Receives assistance in getting clothes or in getting dressed or stays partly or completely undressed.

Toileting—Going to the "Toilet Room" for Bowel and Urine Elimination; Cleaning After Elimination and Arranging Clothes

- ☐ Goes to "toilet room," cleans self and arranges clothes without assistance (may use object for support such as cane, walker, or wheelchair and may manage night bedpan or commode emptying same in morning).
- ☐ Receives assistance in going to "toilet room" or in cleaning self or in arranging clothes after elimination or in use of night bedpan or commode.
- ☐ Doesn't go to room termed "toilet" for the elimination process.

Transfer

- ☐ Moves in and out of bed as well as in and out of chair without assistance (may be using object for support such as cane or walker).
- ☐ Moves in and out of bed or chair with assistance.
- ☐ Doesn't get out of bed.

Continence

- ☐ Controls urination and bowel movement completely by self.
- ☐ Has occasional "accidents".
- ☐ Supervision helps keep urine or bowel control: catheter is used, or is incontinent.

Feeding

- ☐ Feeds self without assistance.
- ☐ Feeds self except for getting assistance in cutting or buttering bread.
- ☐ Receives assistance in feeding or is fed partly or completely by using tubes or intravenous fluids.

Reprinted, by permission, from *The Gerontologist*, 123 Farwood Rd., Philadelphia, PA.

Table 2. Index of Independence in Activities of Daily Living

The Index of Independence in Activities of Daily Living is based on an evaluation of the functional independence or dependence of persons in bathing, dressing, going to toilet, transferring, continence, and feeding. Specific definitions of functional independence and dependence appear below the index.

A—Independent in feeding, continence, transferring, going to toilet, dressing and bathing.

B—Independent in all but one of these functions.

C—Independent in all but bathing and one additional function.

D—Independent in all but bathing, dressing, and one additional function.

E—Independent in all but bathing, dressing, going to toilet, and one additional function.

F—Independent in all but bathing, dressing, going to toilet, transferring and one additional function.

G—Dependent in all six functions.

Other—Dependent in at least two functions, but not classified as C, D, E or F. Independence means without supervision, direction, or active personal assistance, except as specifically noted below. This is based on actual status and not on ability. A

person who refuses to perform a function is considered as not performing the function, even though the person is deemed able.

Bathing (Sponge, Shower or Tub)

Independent: Assistance only in bathing a single part (as back or disabled extremity) or bathes self completely.

Dependent: Assistance in bathing more than one part of body; assistance in getting in or out of tub or does not bath self.

Transfer

Independent: Moves in and out of bed independently and moves in and out of chair independently (may or may not be using mechanical supports).

Dependent: Assistance in moving in or out of bed and/or chair; does not perform one or more transfers.

Dressing

Independent: Gets clothes from closets and drawers; puts on clothes, outer garments, braces; manages fasteners; act of tying shoes is excluded.

Dependent: Does not dress self or remains partly undressed.

Going to Toilet

Independent: Gets to toilet; gets on and off toilet; arranges clothes; cleans organs of excretion; (may manage own bedpan used at night only and may or may not be using mechanical supports).

Dependent: Uses bedpan or commode or receives assistance in getting to and using toilet.

Continence

Independent: Urination and defecation entirely self-controlled.

Dependent: Partial or total incontinence in urination or defecation; partial or total control by enemas, catheters, or regulated use of urinals and/or bedpans.

Feeding

Independent: Gets food from plate or its equivalent into mouth; (precutting of meat and preparation of food, such as buttering bread, are excluded from evaluation).

Dependent: Assistance in act of feeding (see above); Does not eat at all or parenteral feeding.

The Index of ADL

The Index of ADL summarizes overall performance in six functions, namely, bathing, dressing, going to toilet, transferring, continence and feeding. According to the Index, performance is summarized as grades A, B, C, D, E, F, or G, where A is the most independent grade relative to the scale and G the most dependent grade.

By means of a series of questions and observations, the observer forms a mental picture of the person's ADL status as it existed during a 2-week period preceding the evaluation. The observer determines whether another person assisted the person evaluated or whether the person being evaluated functioned alone, defining assistance and active personal assistance, directive assistance, or supervision. The actual existence of such assistance is considered in the evaluation, not the potential or ability of the person being evaluated. Thus, for

example, overprotective assistance is defined as assistance although the observer considers the person as more able; and refusal to perform a function is considered nonfunctioning although the person is deemed able. The observer uses the following definitions in completing the form reproduced in Table 1 and records, for each function, the most dependent degree of performance during the 2-week

Bathing is the overall complex behavior of getting water and cleansing the whole body. A person receives "no assistance" (first of the three classes of bathing in Table 1) if no other person is involved in any part of the process of taking a sponge, shower, or tub bath to wash the whole body. Such a person goes to the sink unaided if the person sponge-bathes at the sink, gets in and out of a tub unaided if the person tub-bathes, and is not supervised in the shower if showering is the means of bathing. A person receives "assistance in bathing only one part of the body" if the person functions as defined above, except that the person is assisted in washing only one part of the body, such as the back alone or one leg alone. The class "assistance in bathing more than one part of the body" includes the individual who is assisted in washing more than one part of the body or who does not bathe. This last, most dependent category, includes also the following: the person to whom water is brought even though the person may wash independently; the person who is helped in or out of a tub as regularly as once a week; the person who is regularly supervised for reasons of safety although the person may wash independently; and the person who cannot reach the feet to wash them.

Dressing is the overall complex behavior of getting clothes from closets and drawers and then getting dressed. A person gets "completely dressed without assistance" (first of the three classes of dressing in Table 1) if no other person is involved in getting clothes from closets and drawers or in putting on the clothes, including brace, if worn, and including outer garments and footwear. Fasteners must also be managed without assistance. Footwear includes such items as socks and slippers or shoes. The intermediate category of dressing includes those who get their own clothes and dress independently as defined above "except for assistance in tying shoes." A person is placed in the third and most dependent category if the person receives "assistance in getting clothes or in getting dressed" or remains "partly or completely undressed."

Going to toilet is the act of going to the room termed the "toilet room" for bowel and bladder function, transferring on and off the toilet, cleaning after elimination, and arranging clothes. The person who functions wholly unaided, including getting to the room, is classed as functioning "without assistance" (first of the three classes in Table 1). It should be noted that an individual in this class may or may not be using an object for support such as a cane, walker, or wheelchair; and may be using a bedpan or commode at night, in which case the individual must empty it in order to be considered in the "without assistance" category. If another person assists in any part

of the function, the toileting status is recorded as "receives assistance" (intermediate toileting category in Table 1). Toileting status is also recorded as "receives assistance" for an individual who uses the toilet room at certain times and at other times uses a daytime bedpan or commode. If a person is occasionally incontinent, but manages completely independently insofar as toileting is concerned, toileting function is recorded as "without assistance."

Transfer is the process of moving in and out of bed and in and out of a chair. If no other person is involved in the transfer, the person being evaluated is considered to function "without assistance" (first of three classes of transfer in Table 1). Such a person may be using an object for support, e.g., cane, walker, or bedpost. The intermediate category, namely, "with assistance," applies if another person is involved in the process. For persons in the third category and bedridden who do not leave the bed at all, when evaluating transfer status, the observer may be told that the person is not allowed to transfer unless supervised for reasons of safety. The observer then determines whether such supervision is a reality. The observer may occasionally find, for example, that a daughter claims she supervises her mother whenever the mother moves from one place to another, when observation reveals that the mother moves about entirely on her own and the daughter means that she is always within hearing distance.

Continence refers to the physiological process of elimination from bladder and bowel where incontinence is the involuntary loss of urine and/or feces. The function is thought of as the primitive function of control and does not include any consideration of hygiene, toileting, or constipation. The person is classed as "controls urination and bowel movement completely by self" (first of three continence categories in Table 1) if no other person assists. Such a person can exert some degree of control on the process independently by medication or by self-administered enema (or, in the case of a person with a colostomy, may manage this independently). The case in which a slight amount of wetness or slight soiling of underclothes is occasionally noted by others and not perceived as incontinence by the person is recorded as "controls urination and bowel movement." The person who does not get to the bathroom or commode on time or who is incontinent at least once during the 2-week period of the evaluation is considered as "has occasional accidents," the intermediate category. Persons in the third category are incontinent or controlled by the supervision, direction or intervention of another person, presence of a catheter or planned, supervised scheduling for bowel control are included in the incontinent category.

Feeding concerns the process of getting food from a plate or its equivalent into the mouth. It is considered in a primitive sense and without concern for social niceties. A person feeds independently "without assistance" (first of three classes of feeding in Table 1) when this primitive process of ingestion is accomplished without the aid of another person. The intermediate category

applies to the individual who feeds independently but receives assistance in cutting meat or buttering bread. The third category, "receives assistance," applies to the individual who is assisted in this feeding process or who is fed partly or completely parenterally.

The form in Table 1 includes all the terms needed in the evaluation. Extensive guides are not needed, although the definitions presented above may be required initially to instruct the observer or in unusual individual patient circumstances. In the interest of maximum accuracy and reliability, the observer may create test situations. The observer may, for example, ask the person to show the bathroom and medications in another room (or a meaningful substitute object). This serves as an opportunity for direct observation of transfer and locomotion and checks on the reliability of information given about bathing, dressing, going to the toilet, and transferring.

Data recorded on the form are converted into an Index ADL grade with the aid of the definitions presented in Table 2. Note from Table 2 that two descriptions would permit one to distinguish between "Independent" and "Dependent" levels for grading purposes; yet three descriptions are presented for the observer to consider on the recording form. Introduction of an intermediate description increases observer awareness of subtle distinctions and, thereby, increases reliability. The intermediate description is classified as dependent for certain functions and independent for others. For grading purposes, the intermediate description of bathing and dressing for example, is classed as dependent. The occasional individual classified as Other (usually less than 5% of the persons) according to the Index, does not have to be eliminated from all studies. By definitions, a person so classed is more dependent than one classed as A or B, and more independent than one classed as G. Individuals classed as Other can, therefore, always be compared relative to those classed as A, B or G. Experience has also shown that the unique profile of a person classed as Other tends to persist and thus permits a precise determination of improvement or deterioration when changes occur. For example, a person who is classified as Other because he is incontinent and dependent in dressing clearly deteriorates when the person develops bathing dependence in addition to incontinence and dressing dependence (grade of D).

Environmental artifacts that tend to influence ADL levels are occasionally encountered. For safety reasons, some hospitals require nurses to supervise patients who shower or get into tubs. During the first few days in the hospital, patients are sometimes kept in bed until the staff can assess their behavior and the degree of dependence permissible. In some nursing homes, patients are kept in bed and not permitted to dress. For safety and convenience, water for bathing and clothes for dressing are sometimes brought to patients. All these special conditions can result in ADL ratings that are lower than they might be in the absence of such restrictions. A test of actual functional level is possible and is indicated for certain studies.

Exhibit B

Interest Credits on Insured RRH and RCH Loans

I. *Purpose:* This Exhibit outlines the policies and conditions under which interest credits will be made on insured Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans.

II. *Definitions:* As used in this Exhibit.

A. "Interest Credit" means the amount of assistance the Farmers Home Administration (FmHA) may give a borrower toward making its payments on an insured RRH or RCH loan.

B. "Interest Credit and Rental Assistance Agreement" means an agreement between FmHA and the borrower providing for interest credits and/or rental assistance, RRH, or RCH loans. This agreement will be on Form FmHA 444-7, "Interest Credit and Rental Assistance Agreement (RRH and RCH loans)."

C. "Project" means the housing and related facilities financed with the RRH or RCH loan.

D. "Basic Rental" means a unit rental charge determined on the basis of operating the project with payments of principal and interest on a loan to be repaid over a 40- or 50-year period at 1 percent per annum.

E. "Market Rental" means a unit rental charge determined on the basis of operating the project with the payments of interest which the borrower is obligated to pay under the terms of the promissory note.

F. "Overage" means the amount by which total rental payments paid by the tenants of a project exceed the total basic monthly charge. The amount of overage will be computed as interest in excess of a 1 percent rate.

III. *Eligibility:* Borrowers may receive interest credits provided the loan (1) was made on or after August 1, 1968, to a nonprofit corporation, consumer cooperative, State or local public agency, or to any individual or organization operating on a limited profit basis; (2) is repaid over a period of 40 years or more; and (3) meets the other requirements of this Exhibit subject to the following limitations:

A. Plan I will be available only to broadly based nonprofit corporations and consumer cooperatives.

B. Plan II will be available to broadly based nonprofit corporations, consumer cooperatives, State or local public agencies, or to profit organizations and individuals operating on a limited profit basis.

IV. *Options of Borrowers:* An eligible borrower may choose Plan I or Plan II, as described below, for determining interest credits on its loan.

A. *Plan I.*

1. Borrowers operating under this plan must agree to limit occupancy of the housing to low-income nonsenior citizens and low- and moderate-income senior citizens or handicapped persons.

2. A borrower under Plan I generally must:

a. Determine that there is a firm market and continuing demand for rental housing by persons within the applicable income limits.

b. Prepare a budget on the basis of a 3 percent loan.

c. Determine rentals to be charged.

B. *Plan II.*

1. Borrowers operating under this plan must agree to limit occupancy of the housing to households, persons, and senior citizens and handicapped persons of low and moderate incomes. Under Plan II interest credits are based on the cost of operating the project and the size and income of the household.

2. A borrower under Plan II generally must:

a. Prepare two budgets, one on the basis of a 1 percent interest rate loan to determine basic rental, and a second budget on the basis of a loan at the interest rate shown in the promissory note to determine market rental.

b. Determine both basic rental and market rental for the different units based on the two budgets. (See Exhibit B-1)

c. Determine adjusted personal income of each tenant and have each tenant complete Form FmHA 444-8, "Tenant Certification." Determine the monthly rent to be paid by each tenant household.

d. Assign a unit of appropriate size for each eligible tenant household based on the number, relationship, and sex of the persons in the household. A household should not be assigned a larger unit than is actually needed. The occupancy standards set forth in Form FmHA 444-27, "Rental Assistance Agreement," should be used as a guide in this respect.

e. Determine the required monthly payment on the loan at one percent interest and overage month for the total units developed with any one loan. The amount of payment will be computed separately for each loan using Form FmHA 444-29, "Project Worksheet for Interest Credit and Rental Assistance."

V. *Determining the Amount of Payment:*

A. *For Plan I.* The amount of payment will be determined by using the amortization factor for a payment at a three percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all surcharges.

B. *For Plan II.* The amount of payment will be determined by using the amortization factor for a payment at a one percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all overages.

VI. *Special Conditions.*

A. *Leases.*

1. Monthly or annual leases will be executed with each tenant occupying a rental unit. The State Director should issue State supplements covering any State laws, special conditions or local customs affecting leasing arrangements that may exist in the state. The lease form, for projects operating under Plan II, in addition to other statements outlining the conditions of the lease, should contain the following statement: "I understand and agree that the monthly rental payment under this lease will be \$—. I also understand and agree that my monthly rental payment under this lease may be raised or lowered, based on changes in my income and changes in the number and age of persons living in my household. The rental payment will not, however, be less than \$— (Basic Rental) nor more than \$— (Market Rental) during the terms of this lease."

2. The lease agreement in congregate housing cases must include in the major

provisions a statement that the tenant's ability to live independently in the project with the support services available will be evaluated on a continuous basis. The tenant may be requested to vacate if a determination is made that the tenant is no longer able to live in the project without additional assistance. This would involve cases where the tenant has progressed or regressed to a state of health that requires, in the opinion of the management, a level of care not available in the congregate housing facility.

3. Loans will be made on the basis of the units being rented to eligible tenants under Plan I or Plan II as described in paragraph IV of this Exhibit. If in connection with the servicing of the loan it becomes necessary to permit ineligible persons to occupy the housing for temporary periods in order to protect the financial interest of the Government, the State Director may authorize the borrower in writing to rent units to ineligible persons subject to the State Director determining that:

a. The borrower has made a diligent but unsuccessful effort to rent the units to eligible tenants.

b. The borrower will continue to try to find eligible tenants.

c. The units will be rented on a monthly basis and only until they can be rented to eligible persons.

d. The ineligible tenants will be charged a rental surcharge as described in paragraph VI B of this Exhibit.

B. *Rental Surcharges to Ineligible Tenants.* If a unit is rented in accordance with the provisions of paragraph VI A 2 to a tenant who is ineligible because the income exceeds the maximum income limits, the ineligible tenant will:

1. Under Plan I, be charged a 25 percent rental surcharge. To illustrate, if the unit normally rents for \$60 per month, this ineligible tenant would pay \$75 per month. The 25 percent surcharge, or \$15 in this illustration, would be paid on the account and would be included with, but in addition to, the regular payment on the loan.

2. Under Plan II, be charged the market rental.

C. *Vacancies.*

1. When construction is completed and all the units are ready for occupancy, vacant units will be assumed to be rented at the basic monthly rental in computing the amount of payment.

2. When all construction is not completed but all FmHA loan funds are outstanding, some of the units are ready for occupancy, and the contractor consents in writing to permit occupancy, the incompletable units will be assumed to be rented at the market monthly rentals in computing the amount of payment.

D. *Interest Credit for Projects Under the Department of Housing and Urban Development (HUD) Housing Assistance Payments Program or FmHA Rental Assistance.* When rental units in an RRH project are leased under the Section 8 program, Form FmHA 444-7 will be completed in accordance with Exhibit H for new construction and Exhibit G for existing units. Projects authorized to utilize rental

assistance will complete Form FmHA 444-7 in accordance with Exhibit C.

E. *Special Cases.* Cases and situations not covered by this Exhibit or Exhibit C or H will be handled on an individual case basis with instructions from the National Office.

F. *Understanding Eligibility.* The borrower should understand the eligibility requirements for occupancy of the housing and that the housing is or will be rented only to eligible tenants unless authorized in writing by FmHA.

VII. Execution of Agreements:

A. *Interest Credit and Rental Assistance Agreement.* Interest credits may become effective at the beginning of the month in which construction is completed on a structure and the units are ready for occupancy. When the project consists of more than one structure, interest credits may become effective for each structure as it is completed and ready for occupancy. When the borrower knows the date the interest credit should become effective, the borrower should notify the District Director and execute Form FmHA 444-7. A separate Interest Credit and Rental Assistance Agreement will be executed for each loan the borrower receives.

B. *Change in Interest Credit Plan.* A borrower under Plan I or Plan II may change, if it can meet the requirements of the other plan, by executing a new Interest Credit and Rental Assistance Agreement during the month of November or December preceding the year in which the new plan will be in effect except that borrowers entering into the rental assistance program may do so at any time. Except for rental assistance, Form FmHA 444-7 will be executed during November or December, but will not be effective until the following January 1.

C. *Borrowers who are not Receiving Interest Credit.* If an eligible borrower did not execute an Interest Credit and Rental Assistance Agreement in accordance with paragraph VII A, it may do so during the month of November or December preceding the year for which the interest credit is to be received. Form FmHA 444-7 will be executed during November or December, but will not be effective until the following January 1. In an unusual case, the National Office may grant interest credits to be effective immediately when the State Director provides adequate documentation that unless interest credits are granted immediately the project cannot continue on a sound financial basis.

VIII. *Tenant Certification: Tenant certification and recertification for interest credit borrowers will be in accordance with § 1944.215(j) of Subpart E of Part 1944.*

IX. *Loan Payments:* With each payment made, the borrower will complete Form FmHA 444-29. The FmHA representative handling the transmittal to the Finance Office will complete Form FmHA 444-9, "Multiple Housing Certification and Payment Transmittal." The forms will be executed in accordance with the requirements of the Forms Manual Insert. The transmittal of these will be handled in accordance with FmHA Instruction 1951-B.

A. Plan I.

1. The borrower will make monthly payments in an amount necessary to repay

the loan as if the loan carried a 3 percent interest rate. When a rental surcharge is collected as described in paragraph VI B of this Exhibit, the surcharge will be included and will be credited as interest to the account as a regular payment. The special handling of payments involving rental surcharges is explained in paragraph IX A 2.

2. When a payment is made for any month that involves a rental surcharge, Forms FmHA 444-29 and 444-9 will be completed with the amount of the surcharge being inserted in the spaces provided. These forms will be completed and the amount shown and transmitted regardless of whether the surcharge is actually collected by the borrower.

B. *Plan II.* The borrower will make monthly payments as though the note was written at a 1 percent interest note plus any overage due and payable whether or not collected from the tenant.

X. *Servicing:* Any unusual case that cannot be serviced in accordance with this Exhibit should be submitted to the National Office with the facts involved and the State Director's recommendations.

Exhibit B-1

Example of Interest Credit Determination For RRH or RCH Projects (Plan II)

\$100,000 RRH Loan—Approved During 1972 Fiscal Year Project Contains Four 1-Bedroom Units and Four 2-Bedroom Units

Budget for Market Rent*	Budget for Basic Rent*
Operating, Maintenance, Vacancy and Contingency allowance, Reserve and Return to Investor, if applicable ² .	Operating, Maintenance, Vacancy and Contingency allowance, Reserve and Return to Investor, if applicable ² .
\$5,277	\$5,277
Loan Repayment at 9% interest—\$100 M x \$91.23 ³ .	Loan Repayment at 1% interest—\$100 M x \$25.52 ³ .
\$9,123	\$2,552
Total Annual Cost	Total Annual Cost
\$14,400	\$7,829
\$14,400 ÷ 12 = \$1,200 cost per month.	\$7,829 ÷ 12 = \$652* cost per month.
Market rent for 2-BR units—\$160.	Basic rent for 2-BR units—\$91
Market rent for 1-BR units—\$140.	Basic rent for 1-BR units—\$72
(\$160 × 4) + (\$140 × 4) = \$1,200—monthly income.	(\$91 × 4) + (\$72 × 4) = \$652—monthly income

* Two complete and accurate budgets must be prepared. One for the Market Rent and one for the Basic Rent. (The expense items in the budgets shown in this illustration are only for illustration purposes and are not itemized).

² The borrower has the option of paying all utility costs (except for the telephone and charges for cable TV) or they may be paid directly by the tenants. When the tenant pays utilities, the rental rate paid by the household will be reduced by the allowance as determined in accordance with Exhibit A-5A.

³ Factor for 50 years. If the regular installment on the note was amortized using a factor for less than 50 years, substitute the appropriate factor for a corresponding number of years.

*Rounded to nearest dollar.

Exhibit C

Rental Assistance Program

I. *General.* The objective of the rental assistance program is to reduce the rents paid by low-income households. This exhibit sets forth the policies and procedures and delegates authority under which rental assistance (RA) will be extended to eligible tenants occupying eligible Rural Rental

Housing (RRH) and Rural Cooperative Housing (RCH) projects financed by FmHA. This exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public Agency. Rental assistance will supplement the benefits available to tenants under the interest credit program outlined in Exhibit B to this Subpart.

II. Definitions.

A. *Adjusted Annual Income.* This is the total planned income of the household for the next 12 months as defined in § 1822.3(n) of Part 1822 Subpart A paragraph III N, FmHA Instruction 444.1 less 5 percent, thereof, and less an additional \$300 for each minor person, excluding the tenant and co-tenant, who is a member of the household and lives in the rental unit.

B. Adjusted Monthly Income.

This is the amount obtained by dividing the Adjusted Annual Income by 12.

C. *Eligible Tenants.* Any low-income household handicapped persons, or senior citizen that is unable to pay the approved rental rate for an eligible FmHA RA units within 25 percent of their adjusted monthly income and whose adjusted annual income does not exceed the limit established for the State as indicated in Exhibit C to Part 1822 Subpart A, FmHA Instruction 444.1.

D. Eligible Project.

1. All projects, except (a) LH loans and grants, and (b) direct RRH, and insured RRH loans approved prior to August 1, 1968, must convert to Interest Credit Plan II before they are eligible to receive rental assistance. All new RRH projects must also operate under Plan II to receive rental assistance. For a borrower to have an eligible project, the loan must be an:

a. RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, or

b. RRH insured loan to an individual or organization who has or will execute a Loan Resolution or Loan Agreement agreeing to operate the housing on a limited profit basis as defined in § 1944.205(r) of this subpart, or

c. RCH insured or direct loan, or

d. LH Loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local public Agency.

2. Projects with all or a part of the units under contract with the Department of Housing and Urban Development (HUD) developed under the Section 8 program for new construction or rehabilitation by either the dual or single track processing procedures will not be considered an eligible project. This exemption does not prohibit the borrower from utilizing HUD's Section 8 Housing Assistance Payments Program for existing housing and FmHA rental assistance for other eligible households in the same project.

E. *Rental Assistance.* Rental assistance, as used in this Exhibit, is the difference between 25 percent of the household's adjusted monthly income and the approved rental rate (including costs of all utilities and services, when applicable) for the unit being occupied by the household. When the household's

adjusted monthly income is less than the allowance established for utilities and services billed directly to and paid by the tenant, the owner will pay the household that difference in accordance with paragraph VII A of this Exhibit. Rental Assistance is further defined as:

1. For projects operating on Interest Credit Plan II, it is the difference between 25 percent of the household's adjusted monthly income and the basic rent including utilities for the unit.

2. For all direct RRH loans, insured RRH loans approved prior to August 1, 1968, and all eligible LH loans, it is the difference between 25 percent of the household's adjusted monthly income and the approved market rental rate including utilities for the unit.

F. *Approved Rental Rate.* The rental rates (basic and/or market rent) determined by the budget for the project and approved by FmHA. Rental rates will be considered approved if the budget for the year has been approved in accordance with § 1802.78 Part 1802 Subpart G (paragraph X, of FmHA Instruction 430.2) and utility allowances, when required, have been determined and approved in accordance with paragraph VIII B of this Exhibit. The rental rate includes the amortized principal and interest payments, operating and maintenance costs, required deposits to the reserve account and a return on the owner's initial investment when allowed by FmHA regulations. The cost of utilities and other public services when paid by the owner will be included in the operating and maintenance expenses to determine the approved rental rates.

G. *Utility Allowances.* The allowance approved by FmHA to cover the cost of utilities which are payable directly by the households.

III. *Eligibility of Borrower.* All borrowers who meet the eligible project definition in paragraph II D of this Exhibit are eligible and are encouraged to utilize the rental assistance program and receive rental assistance payments on behalf of low-income tenants as provided for in accordance with this Exhibit. Generally, the borrower will initiate the processing of a rental assistance application. A borrower who does not request assistance may be encouraged to do so by the District Director if rental assistance units are available and 20 percent or more of the households eligible for rental assistance in an eligible project petition the borrower to obtain rental assistance on their behalf. The petitions shall be in writing to the borrower and contain the signature of the head of each household who is paying more than 25 percent of their adjusted monthly income for rent including utilities and desiring rental assistance. A copy of the petition will be submitted to the District Director.

IV. *Eligibility of Tenants.* All tenants as defined in paragraph II C of this Exhibit are eligible to receive the benefits of rental assistance when occupying a rental unit in an eligible project provided the project owner has agreed to provide such assistance in accordance with this exhibit and there are RA units available.

V. *Priority of Rental Assistance Applications.* The National Office may

establish a State quota on the number of units that may receive rental assistance in any fiscal year. The State Director will limit the approval of rental assistance to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of units for existing projects and the number of units to be used with the applications for loans. The priority in allocating units will be as follows:

A. *Allocation to Projects Within a State.* The State Director will distribute any units allocated to the State in accordance with any specific instructions from the National Office and approve requests for rental assistance to projects in accordance with the provisions of this Exhibit.

1. *Existing Housing:* The State Director will distribute any units allocated to the State for existing RRH, RCH, and LH projects by considering Forms FmHA 444-25, "Request for Rental Assistance," Special PN dated 9-28-78, that have been submitted by eligible borrowers. The State Director shall authorize rental assistance to projects with priority given to projects based on the earliest date that Form FmHA 444-25 and other required information is submitted to FmHA in acceptable form. (Also see paragraph X). The number of units to be granted in any project will be based on the number of households in the project needing rental assistance up to the maximum allowed. The National Office shall notify the State Director each year of any specific date by which all requests for rental assistance must be submitted to FmHA for consideration.

2. *New Housing:* Any units allocated to the State for new construction (which includes substantial rehabilitation) shall be distributed on a priority basis in the following order:

a. RRH or RCH projects to be provided in areas where HUD Section 8 units under the FmHA set-aside are not available.

b. Applications for RRH and RCH loans where the market survey information indicates that without RA, a large percentage of the prospective tenants will be paying in excess of 25 percent of their adjusted monthly income for rent including utilities. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those projects located in areas identified as having the greatest housing needs and selected for funding in accordance with § 1944.231 (d)(3) of Subpart E.

c. For LH projects, RA units will be allocated by the National Office on a case-by-case basis at the time the projects are considered for funding at the National Office level.

3. *Limitation on number of units of rental assistance in each project:* The maximum number of units in a project to obtain rental assistance is limited to the following:

a. No limitation for eligible labor housing loan and grant projects.

b. No limitation for RRH, RCH or SCH projects designed and limited to housing for the senior citizen or handicapped except that the State Director may limit the percentage of units granted to senior citizen or handicapped projects to no more than 40 percent if it

appears that the number of units distributed to the State will not be adequate to approve all requests for rental assistance.

c. An RCH or RRH project designed and/or primarily occupied by low- and moderate-income households will be limited to not more than 20 percent of the total number of units in the project.

d. An RCH or RRH project planned and designed for a mix of senior citizen or handicapped persons and low- and moderate-income households will be limited to not more than 20 percent of the total number of units designed for low- and moderate-income households and no limitations on the units designed for and occupied by senior citizens or handicapped persons.

B. *Granting Exceptions.*

1. *State Directors Authority.* An exception to the 20 percent limitation indicated in paragraphs V A 3 a, c and d of this Exhibit may be granted by the State Director for up to 40 percent of the units in any particular project (fractional units will be rounded to the next higher whole number). However, the total number of units of rental assistance granted by the State Director including exceptions, cannot exceed the number of units allocated to that State. Exceptions will be granted only when units are or can be made available and the following conditions exist:

a. When more than 20 percent of the units are occupied by households who are paying more than 25 percent of their adjusted income for rent including utilities, and such units are no larger than needed to meet the household's need, or

b. The tenants in a project that is being assisted at the 20 percent level experience a hardship as a result of an income decrease or a rental increase and must obtain rental assistance to remain in the project, or

c. The project is being developed in an area of extremely low-income households and the majority of the proposed tenants will be paying in excess of 25 percent of their income for rent including utilities.

2. *National Office Authority.* If the project is located in or is being developed in an area of extremely low-income households and the majority of the tenants are, or will be, paying in excess of 25 percent of their income for rent including utilities, the National Office may authorize the State Director to grant approval for a greater number of units on a case-by-case basis for up to 100 percent of the units to receive rental assistance. Such requests will be submitted to and approved by the National Office prior to loan granting or requesting obligation of rental assistance for more than 40 percent of the units in the project.

C. *Processing Exception Requests.*

1. A request for an exception to the 20 percent limitation for existing projects will be submitted by the borrower to the District Director. After reviewing the request for completeness, accuracy, and sufficient documentation to fully support the request, the District Director will submit the request with supporting documentation and recommendations to the State Office by memorandum for approval. Included in the memorandum will be the number and percentage of units in excess of the 20

percent limit and justification for the approval. When National Office authorization is required to exceed the 40 percent limitation, the State Director will request this authorization by memorandum and will include the following:

a. For new projects, Form FmHA 444-25, the applicant's case file, complete data and documentation on the rental housing market situation, complete data and documentation on the income of the households likely to be served, the comments of the District Director, and the comments and recommendations of the State Director. If an applicant requests authority to exceed the 40 percent limitations for a new project after the loan is approved, such requests will not be approved until the project is completed, and at least partially occupied and it is apparent that full rentup will not occur unless the 40 percent limitation is exceeded.

b. For existing projects, Form FmHA 444-25, Form FmHA 444-29, "Project Worksheet for Interest Credit and Rental Assistance," with columns 1 through 12 completed for each tenant in the project, a copy of the project's waiting list for occupancy identifying eligible prospective tenants whose incomes have been verified and who are willing to occupy vacant units if an exception to the 40 percent limitation were made, a copy of any existing Rental Assistance Agreement and modifications thereto which may be in effect on the project, the comments of the District Director, and the comments and recommendations of the State Director.

2. The State Director will maintain Form FmHA 444-28, "Record of Rental Assistance Agreement." The record will include the borrower's case number, fund code, loan number, number of units in the project, number of units for rental assistance authorized and the effective date of each agreement and amendment. This information will be obtained from Form FmHA 444-25, Form FmHA 444-26, "Request for Obligation of Rental Assistance", and Form FmHA 444-27, "Rental Assistance Agreement." Any changes which are made in the number of rental units assisted will be recorded in the Record of Rental Assistance Agreements. Form FmHA 444-28 will be used for keeping this record.

VI. *Priority Among Eligible Households Within a Project Receiving Rental Assistance.* The borrower will determine priority for RA among tenants living in a project and among households applying for occupancy in accordance with this paragraph.

A. In Existing Projects:

1. 1. If the project is fully occupied at the time the rental assistance is granted, priority will be given to households paying the highest percentage of its annual adjusted income for rent including utilities. However, no household eligible to occupy a unit in the project will be required to move from the project to allow a household applying for a unit who has a higher priority to move in.

2. If the project has vacancies or vacancies occur and rental assistance is available, priority will be given to households already living in the project who are eligible for rental assistance before any new tenants are considered. Priority for new tenants in

congregate housing projects will be based upon the selection criteria set forth in the borrower's statement of policy regarding management and operation submitted in accordance with Exhibit A-7 to this subpart and approved by FmHA. Priority for new tenants in other projects will be based on the date of the household's application for occupancy. If more than one household applies for a unit on the same date, the application will be time dated. If the household with the earliest date of application is unable or does not want to accept the rental assistance unit, the unit will be offered to the next earliest application. The application of a household who is unable for personal reasons or does not want to accept a rental assistance unit when notified, will be redated as of the current date if the household still wishes to be considered for occupancy.

3. If the project has vacancies or vacancies occur and rental assistance is available, the units will be leased to eligible households having the highest priority. Priority for new tenants in congregate housing projects will be based upon the selection criteria set forth in the borrower's FmHA approved statement of policy regarding management and operation, regardless of whether they qualify for rental assistance. Priority for new tenants in other projects will be based on date of application for occupancy regardless of whether they qualify for rental assistance.

4. If the project has vacancies or vacancies occur and rental assistance is not available, a household eligible for rental assistance may accept occupancy but cannot receive rental assistance. Such households will be considered for rental assistance in accordance with paragraph VI A 1. If such households elect not to accept occupancy because rental assistance is not available, their application for a unit will retain its original date for priority.

5. Tenants receiving the benefits of rental assistance shall continue receiving such benefits as long as they remain eligible tenants and there is a rental assistance agreement in effect.

B. *In New Projects.* Applications for occupancy should be accepted during the construction phase of the project. Priority in congregate housing projects will be given based on the selection criteria set forth in the borrower's FmHA approved statement of policy regarding management and operation. Priority in other projects will be given based on the date of the household's application for occupancy. If all or a percentage of the units are authorized to receive rental assistance, such number of units will not be rented to households whose adjusted annual income exceeds the limits established for the State as indicated in Exhibit C to Part 1822 Subpart A (FmHA Instruction 444.1) without the written approval of the District Director. The District Director will not grant such approval until a review has been made of the borrower's method of advertising the units and it has been determined that households eligible for rental assistance are not available or do not desire occupancy.

VII. *Responsibilities of Borrower in Administering the Rental Assistance Program.* Each borrower and management

agent for each project that is to receive rental assistance should fully understand the responsibilities and requirements of carrying out the program. The borrower and management agent are the key to the successful operation of the program. The following guidelines will be followed:

A. Direct rental assistance payments will not be made to eligible tenants receiving rental assistance except in those instances when utilities are paid by the household and 25 percent of the household's monthly adjusted income is less than the allowance for utilities. In these cases, the borrower will pay the household that difference upon the household providing the borrower evidence that the utility bills are due or have been paid (See paragraph VIII A). The borrower will maintain an accurate accounting of each tenant's utility allowance and payments made to tenants.

B. The borrower must initially submit Form FmHA 444-8, "Tenant Certification," for each tenant. The initial tenant certification will be submitted to the FmHA District Office with the next monthly payment following the date that the tenant occupies the unit. Subsequent tenant certifications must be obtained annually and submitted to the District Office with the first monthly payment following the date of the certification. The borrower or management agent will establish an adequate recordkeeping system of tenant certifications to assure this responsibility is carried out.

C. The incomes reported by the tenants must be verified by the borrower in accordance with § 1944.215 (j)(3) of this subpart.

D. Borrowers utilizing RA must comply with § 1802.78 Part 1802 Subpart G, (paragraph X of FmHA Instruction 430.2). RA will not be approved for projects until the operating budgets have been approved by the FmHA State Office or the District Director. District Directors, with assistance in complying with all accounting and management requirements.

E. A borrower participating in the RA program must have an FmHA approved lease with the assisted household.

1. Monthly or annual leases will be executed with each household occupying a rental unit. The State Director may issue State supplements covering any special conditions or local customs affecting leasing arrangements. In addition to other statements outlining the conditions of the lease, the lease form for tenants receiving RA should contain the following statements rather than those required in paragraph VI A of Exhibit B to this subpart:

"I understand and agree that as long as I receive rental assistance, my total monthly payment for rent and utilities will be \$—, (25 percent of my adjusted monthly income). If I pay any or all utilities directly (not including telephone or cable TV), a utility allowance of \$— will be deducted from my monthly payment for rental and utilities. If the utility allowance is in excess of 25 percent of my adjusted monthly income, the lessor will pay me this excess.

I Further agree to notify the lessor of any permanent increase in adjusted monthly income or change in the number of household members living in the household. I

understand that should I receive rental assistance benefits to which I am not entitled that I may be required to make restitution and I agree to pay any amount of benefits received to which I was not entitled.

I also understand and agree that my monthly payment for rent under this lease may be raised or lowered, based on changes in household income and changes in the number and age of household members living in my household. Should I no longer receive rental assistance as a result of these changes, I understand and agree that my monthly payment for rent may be adjusted to no less than \$— (basic rental) nor more than \$— (market rental) during the remaining term of this lease."

Eligible borrowers with LH loans and grants, direct RRH loans, or insured RRH loans approved before August 1, 1968, may omit the words "no less than \$— (basic rental) nor more than" from the last sentence of the above statement.

2. Lease clauses which fall within the classifications listed below shall not be included in any lease.

a. *Confession of Judgment.* Prior consent by tenant to any lawsuit the landlord may bring against the tenant in connection with the lease and to a judgment in favor of the landlord.

b. *Distraint for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

c. *Exculpatory Clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

d. *Waiver of Legal Notice by Tenant Prior to Actions for Eviction or Money Judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

e. *Waiver of Legal Proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

f. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

g. *Waiver of Right to Appeal Judicial Error in Legal Proceedings.* Authorization to the landlord's lawyer to waive the tenant's right to appeal on the grounds of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

h. *Tenant Chargeable with Costs of Legal Actions Regardless of Outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant.

(Omission of such clause does not mean that the tenant, as a part to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.)

3. A copy of a completed Exhibit A-5A of this Subpart when the tenants pay part or all of the utilities and a copy of the established rules and regulations for the project will be provided to the tenant as attachments to the lease.

VIII. Handling Utility Allowances and Determining the Amount of Rent.

A. *Payment of Utilities.* All units in projects to be constructed will be individually metered for utilities unless adequate justification is provided to show that it would be infeasible or excessively costly. In an existing project which is not individually metered, the project will be converted to individual meters if feasible and an energy savings can be achieved. In every case, the approved rents for the projects must include the cost of utilities (except telephone and charges for cable TV) paid by the owner. In a project where the tenant is billed directly for the utilities, the tenant receiving the benefit of rental assistance will pay the owner as rent the difference between the established allowance for utilities which the tenant pays and 25 percent of the household's adjusted monthly income. If, however, 25 percent of the household's adjusted monthly income is less than the monthly allowance for utilities, the owner will pay the tenant that difference as prescribed in paragraph VII A. In a project where the owner pays all the utilities, the tenant will pay the owner the full 25 percent of the adjusted monthly income toward the approved rent for the unit being occupied.

B. *Determining the Allowance.* The utility allowance will be determined and recorded by the use of Exhibit A-5A of this Subpart and submitted to FmHA for approval. The data will be analyzed by the FmHA State Office to determine the allowance that will be permitted. The utility allowance is to be approved on a project-by-project basis. If the allowances are reasonable for the project, The Exhibit A-5A will be approved. The allowable amounts will be indicated in each lease agreement between the owner and tenant.

C. *Changes in Allowances.* The utility allowance may and should be adjusted to reflect substantial changes in utility and public service rates. Normally, allowances will be adjusted on an annual basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in increasing the amount of the rent paid by tenants will be processed in accordance with Part 1802 Subpart G Exhibit F (FmHA Instruction 430.2).

IX. Terms of the Rental Assistance Agreement.

A. *Effective Date.* The effective date of the Rental Assistance Agreement will be the first day of the month it is executed unless assistance is granted under appeal in accordance with paragraph XII of this Exhibit; then, the effective date will be retroactive to the first of the month in which assistance was denied.

B. Term.

1. *For New Construction.* The term of the agreement shall be for a period of twenty (20) years from the effective date of the agreement, unless superseded by a modified

agreement in accordance with Section 4 of the rental assistance agreement or terminated in accordance with conditions stated in Section 8 or 10 of the rental assistance agreement. Modified agreements will extend only for the remaining period of an original agreement. (A new construction project is one in which no unit has been occupied.) Upon expiration of the twenty year period, a new agreement may be executed. If a new agreement is considered, it will be made for a period not to exceed five (5) years.

2. *For Existing.* The term of the agreement shall be for a period of five (5) years from the effective date of the agreement, unless superseded by a modified agreement in accordance with Section 4 of the rental assistance agreement or terminated in accordance with conditions stated in Section 8 or 10 of the rental assistance agreement. Modified agreements will extend only for the remaining period of an original agreement. (An existing project is one in which one or more units have been occupied.) Prior to the termination date of any agreement a new Form FmHA 444-25 may be submitted. If a new agreement is consummated, it will be made for a period not to exceed five (5) years.

X. *Processing of Rental Assistance Applications.* All requests for rental assistance will be processed in accordance with this paragraph and may be approved by the State Director.

A. Existing Projects.

1. A borrower with an eligible project in which there are tenants paying in excess of 25 percent of their adjusted income for rent is encouraged to file Form FmHA 444-25, with the District Director. A separate Form FmHA 444-25 will be submitted for each project. The borrower should include the following with each request.

a. Form FmHA 444-29, "Project Worksheet for Interest Credit and Rental Assistance" with columns 1 through 12 completed for each tenant in the project.

b. Approved or proposed budget for the year with Exhibit A-5A of this Subpart attached when applicable.

2. The District Director will review the budget, Exhibit A-5A, and Form FmHA 444-25 submitted by the borrower to assure that the items are complete and accurate. The District Director will complete Form FmHA 444-25 and submit all data provided by the borrower to the State Director.

B. Projects to be Funded.

1. Applicants requesting funding under the RRH or LH programs planning to utilize the rental assistance program should submit a completed Form FmHA 444-25 to the County Supervisor or District Director, as appropriate, when submitting a preapplication or application for funding.

2. The number of units of rental assistance requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.

C. State Director Action on Requests for Rental Assistance.

1. *Timing of Action.* If the State Director determines that rental assistance can be granted or a change in the number of rental assisted units is needed, Form FmHA 444-26

will be prepared. Form FmHA 444-26 will be prepared and distributed in accordance with the Forms Manual Insert. *Form FmHA 444-27 will not be executed until the Request for Obligation of Rental Assistance has been returned from the Finance Office indicating that the requested number of units and funds have been obligated for the project.*

2. *Initial Request.* Once the initial request for rental assistance has been obligated by the Finance Office, the State Director will prepare an original and three copies of Form FmHA 444-7, "Interest Credit and Rental Assistance Agreement RRH and RCH Loans," and an original and two copies of Form FmHA 444-27. The State Director will keep one copy of the Forms in the State Office borrower file. The original and two copies of Form FmHA 444-7 and the original and one copy of Form FmHA 444-27 will be sent to the District Office with the covering memorandum authorizing the District Director to execute the agreements. Both originals and copies will be executed by the borrower and District Director. The District Director will retain the original of Form FmHA 444-27 in the borrower file and the executed copy will be given to the borrower. The District Director will send the original of Form FmHA 444-7 to the Finance Office, retain a copy in the borrowers file and an executed copy will be given to the borrower.

3. *Modification of an Existing Agreement.* When a change in the amount of rental assistance has been obligated by the Finance Office, the Form FmHA 444-27 will be prepared, signed and distributed in the same manner as provided for in paragraph X C 2 except a Form FmHA 444-7 is not required.

4. If rental assistance cannot be provided, the State Director will by letter, through the District Director, inform the borrower in writing of the reasons.

XI. *Method of Payment of Rental Assistance to Borrower.* The borrower will prepare a separate report for the project using Form FmHA 444-29. The worksheet will be prepared and distributed in accordance with the instructions for preparation or the Forms Manual Insert. This information will be used by the District Director in preparation of Form FmHA 444-9, "Multiple Housing Certification and Payment Transmittal." The form must be completed in accordance with the FMI. The required payment will be transmitted with the form to the Finance Office. The rental assistance payment will be mailed by the Finance Office directly to the borrower within 15 working days of receipt of a properly completed Form FmHA 444-9. Since the check will be sent directly to the borrower, the District Director must be sure that the borrower's address on Forms FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request," and 450-14, "Annual Statement of Loan Account," are correct. If the address shown on these forms is not correct, the District Director will complete Form FmHA 450-10, "Advise of Borrower's Change of Address or Name," prior to any request for payment of rental assistance. However, when a borrower has more than one project within a county, all checks must be sent to the same address.

XII. *Rights for Appeal if Rental Assistance is not Granted by Farmers Home Administration.*

A. Households who have requested rental assistance in writing but have been denied such assistance (whether in whole or in part) either by the borrower or District Director are to be notified in writing of the specific reasons why they have been denied rental assistance. If a household has requested rental assistance directly to the borrower in writing, the borrower is responsible for notifying the household in writing of the reasons why rental assistance was not made available.

B. Borrowers who have requested rental assistance and are denied such assistance, in whole or in part by the Farmers Home Administration, will be notified in writing of the specific reasons why such assistance was denied. The letter informing the borrower of the denial will advise the borrower that the decision may be appealed by writing to the Administrator.

C. The letter informing the household or borrower of the denial of assistance and the reasons therefor must include:

1. In case the determination was made by the borrower, that the decision is subject to appeal to the FmHA District Director giving name and address.
2. In case the decision was made by the District Director, that an appeal may be made to the State Director giving name and address.
3. In case the decision was made by the State Director, that an appeal may be made to the Administrator giving name and address.

4. A statement that "any appeal must be filled within 45 days of the date of this notice of denial of assistance."

D. If the State Director denies an appeal for assistance, the borrower or household may appeal that decision to the Administrator, Farmers Home Administration, Washington, DC 20250. The Administrator upon review of the appeal shall either affirm or reverse the decision.

E. If at any time, it is determined that a borrower or a household was eligible to receive assistance after the effective date of this Exhibit and assistance could have been made available in accordance with this Exhibit, the provision of the assistance will be retroactive to the first of the month in which assistance was initially denied.

F. All actions by FmHA officials must be within 30 days of receipt of an appeal.

XIII. *Forms and Exhibits.* Incorporated as a part of this regulation are Exhibits A-5A, and Form FmHA 444-7, which are to be utilized in determining amount of rental assistance to be provided.

Exhibit D

Guide Letter for Use in Informing Interim Lender of FmHA's Commitment

(Name and Address of Private Lender)

Dear Mr. _____:
(For Organizations)

Reference is made to a request from the (Smith Housing Assoc.) through (John Smith) its President, for interim financing from your firm to construct a rental housing facility at

the interest rate and terms and conditions agreed upon as reflected in the attached letter.

(For Individuals)

Reference is made to a request from (John Jones) for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

This letter is to confirm certain understandings on behalf of the Farmers Home Administration (FmHA).

Final drawings, specifications, and all other contract documents have been prepared and approved, and the applicant is prepared to commence construction. It has been determined by the applicant and the Farmers Home Administration that the conditions of loan closing can be met. Funds have been obligated for the project, as evidenced by the attached copy of Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request."

The applicant has been required by FmHA to deposit \$_____ with your firm to be utilized prior to any interim loan funds. The applicant has proposed and FmHA has agreed that you may first advance any applicant funds on deposit, and then advance the proceeds of the interim loan in accordance with the terms and conditions stated in your attached letter, as needed to pay for construction and other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimates prepared by the builder, and approved for payment by the consulting architect, the applicant, and the FmHA District Director.

We have scheduled the Farmers Home Administration loan to be closed when construction to be financed with loan funds is substantially complete in accordance with the FmHA approved [contract documents,] * drawings and specifications, (except for minor punch list items), and the applicant provides evidence and a signed certification indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the FmHA loan amount will be available to pay off the amount of loan advances your lending institution has made for authorized approved purposes, including accrued interest to the date of closing.

FmHA cannot provide you with an unconditional letter of commitment guaranteeing FmHA loan closing. Factors such as noncompletion, default, unacceptable workmanship, and marked deviation from approved drawings and specifications could prevent the FmHA loan from being closed.

These problems can be minimized by making a thorough review of the [contract documents,] * drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance. If the builder is unable to provide a surety bond, we suggest that your lending institution consider making advances for partial payments to the builder [in accordance with the provisions of

the construction contract)* based upon no less than 60 percent and no more than 90 percent of the value of acceptable work in place, less the aggregate of previous payments.

The following are additional safeguards to help assure FmHA loan closing:

1. We invite you or your representatives to accompany FmHA personnel during construction inspections so that at least 3 or 4 joint inspections at critical points during construction, (including the final inspection), can be made to help assure that construction is proceeding in accordance with the FmHA approved drawings and specifications.

2. FmHA will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates, provided work on the project is progressing satisfactorily and any identified problems have been resolved.

3. FmHA will not arbitrarily abandon your lending institution in the event of default. Should the contractor default, FmHA will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements, provided a new contractor can complete the project for a total cost within the security value of the project. If this is not possible, or should the FmHA loan applicant become unable or unwilling to continue with the project, FmHA also will attempt to provide financial assistance to any eligible applicant (subject to the availability of funds, our administrative procedures, and our lending requirements), to purchase the completed project from your lending institution.

4. FmHA is aware that circumstances, such as subsurface ground conditions and change orders necessitated by required changes in the work to be performed, may cause cost increases after FmHA loan approval and the obligation of FmHA loan funds. When justified FmHA may make subsequent loans when necessary to help cover these eligible costs, provided additional loan funds are available, the change orders were approved by FmHA, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

State Director _____

Exhibit E

Articles of Incorporation

(Not for Profit)

We, the undersigned, incorporators, hereby associate ourselves together to form and establish a corporation not for profit under the laws of the State of _____.

First: The name of the corporation is _____.

Second: The location of its principal place of business in this State is _____, _____ County.

Third: The location of its registered office in this State is _____, _____, _____ County.

* These words may be omitted for projects constructed by the owner-builder method of construction without a construction contract.

Fourth: The name and address of its resident agent in this State is _____, _____, _____ County.

Fifth: This corporation is organized not for profit under _____ and the objects and purposes to be transacted and carried on are to promote the general social welfare of the community and for that purpose:

To acquire, construct, provide, and operate rental housing and related facilities suited to the special needs and living requirements of eligible occupants as determined by Farmers Home Administration regulations, without regard to race, color, religion, sex, marital status, physical or mental handicap (must possess capacity to enter into a legal contract) or national origin;

To acquire, improve, and operate any real or personal property or interest or right therein or appurtenant thereto;

To sell, convey, assign, mortgage, lease any real and personal property;

To borrow money and to execute such evidence of indebtedness and such contracts, agreements, and instruments as may be necessary, and to execute and deliver any mortgage, deed of trust, assignment of income, or other security instrument in connection therewith; and to do all things necessary and appropriate for carrying out and exercising the foregoing purposes and powers.

Sixth: The number of director shall be prescribed in the bylaws, but shall be not less than five nor more than nine.

Seventh: The corporation formed hereby shall have no capital stock. It shall be composed of members rather than shareholders. The conditions and regulations of membership and the rights or other privileges of the classes of members shall be determined and fixed by bylaws.

Eighth: The corporation is not organized for pecuniary profit and shall have no power to declare dividends. No part of its net earnings shall inure to the benefit of any member, director, or individual. The balance, if any, of all money received by the corporation from its operations, after payment in full of all operating expenses, debts, and obligations of the corporation of whatsoever kind and nature as they become due, shall be used to make advance payments on any loans owed by the corporation, to lower the lease-rental charge to occupants of the housing, to provide additional housing and related facilities, or for some related purpose.

Ninth: The name and place of residence (post office address) of each of the incorporators:

Tenth: In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more such nonprofit corporations or municipal corporations as may be selected by the board of directors of this corporation, to be used for, and devoted to the purpose of carrying on a nonprofit housing project for such rural residents or other purpose to promote the general social welfare of the community. In no event shall any of the

assets or property, in the event of dissolution thereof, go or be distributed to members, either for the reimbursement of any sum subscribed, donated, or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

Eleventh: The duration of the existence of this corporation shall be perpetual.¹

IN TESTIMONY WHEREOF, WE have unto subscribed our names on _____, 19____.

(Insert acknowledgment or other form if required by State law.)

Bylaws

Bylaws of _____

A Nonprofit Corporation

Article I

Office.

Section 1.01. Principal Office.

The principal office of the corporation in the State of _____ shall be located at _____, County of _____.

Section 1.02. Registered Office and Agent.

The corporation shall have and continuously maintain in the State of _____ a registered office and a registered agent whose office is identical with such registered office.

Article II

Members.

Section 2.01. Eligibility for membership.

The corporation shall have one class of members. Members may be individuals or organizations. Any legally competent person of good reputation who resides in the Town of _____ or in the surrounding trade area, applies for membership, and pays the required membership fee shall be eligible.

Section 2.02. Approval of Applications for Membership.

All applications for membership shall be approved at (1) any special or regular meeting of the board of directors, when a quorum is present, by a majority vote of the board members or (2) by a majority vote of the existing membership present at any annual or special meeting held in accordance with Article III herein.

Section 2.03. Voting Rights.

Each member shall be entitled to one vote on each matter submitted to a vote of the members.

Section 2.04. Termination of Membership.

A member may be suspended or expelled, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the member has been informed in writing of the charges preferred against the member at least ten days before such meeting. The members shall be given an opportunity to be heard at

¹Duration should be perpetual, or long enough to cover the period of the loan plus five years, or for the longest period permitted by the State law.

such meeting. The members of the board, by a majority vote of those present at any regularly constituted meeting, may terminate the membership of any member who become ineligible for membership and may suspend or expel any member who shall be in default with respect to any financial obligation to the corporation.

Section 2.05. Resignation. Any member may resign by filing a written resignation with the secretary.

Section 2.06. Reinstatement. Upon written request signed by a former member and filed with the secretary, the board may reinstate such former member to membership upon such terms as the board may deem appropriate.

Section 2.07. Transfer of Membership. Membership in this corporation is not transferable or assignable.

Section 2.08. Membership—Fees. The membership fee shall be \$——— or such other amount as may be fixed by the members at any annual meeting or at any special meeting called for the purpose. No person shall attain membership before paying the treasurer the membership fee.

Section 2.09. Membership—Liability for Corporation's Obligations. Fully paid members shall not be liable for any debts or obligations of the corporation and shall not be subject to any assessment; but the members at any annual meeting or at any special meeting called for the purpose, may fix reasonable annual dues to become effective after not less than 30 days' notice to all members of such action.

Section 2.10. Membership—Minimum Number. The board will make all reasonable efforts to maintain a broad community-wide membership of not less than 25 members at any time.¹

Section 2.11. Membership—Residence. A majority of the members shall be residents of the community where the housing is or will be located.

Article III

Meetings of Members.

Section 3.01. Annual Meeting. An annual meeting of the members shall be held at——— on the——— of the month of——— each year, beginning with the year 19—— at the hour of——— O'clock,——— M., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in said State, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the members as soon thereafter as convenient.

Section 3.02. Special Meetings. Special meetings of the members may be called by the president, the board, or not less than one-tenth of the members.

Section 3.03. Place of Meeting. The board of directors may designate any place within

or not more than——— miles from——— as the place for an annual meeting or for any special meeting called by the board. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the registered office of the corporation in said State.

Section 3.04. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, not less than seven or more than thirty days before the date of such meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute of these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at the address as it appears on the records of the corporation, with postage thereon prepaid.

Section 3.05. Informal Action by Members. Any action required by law to be taken at a meeting of the members, or any action which may be taken at a meeting of the members, may be taken without a meeting upon written consent or approval of all the members, setting forth the action so taken.

Section 3.06. Quorum. At such a meeting a quorum shall consist of 30 percent ² of the members, or twice the number of directors, whichever is greater. If a quorum is not present at any meeting of members, a majority for the members present may adjourn the meeting from time to time without further notice.

Section 3.07. Proxies.

(a) At any meeting to the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. A proxy may be cancelled by notice executed by the member with like formality and delivered to the secretary.

(b) At each meeting of the members, every member shall be entitled to vote in person or by proxy and shall be entitled to cast one vote. The votes for directors shall be by ballot. Only the person in whose name membership is standing in the books of the corporation on the day such meeting shall be entitled to vote in person or by proxy.

(c) For any person to represent a member by proxy, such person must submit a power of attorney to the secretary of the board for examination at least one hour before the time of meeting. When the secretary has certified the power of attorney is in good order, the proxy holder shall have the right to do any and all things which might be done by the member were the member present in person, which right shall include the establishment of a quorum and the organizing of any meeting.

Article IV

Board of Directors.

Section 4.01. General Powers. The affairs of the corporation shall be managed by its board of directors.

Section 4.02. Number, Tenure, and Qualifications. The number of directors shall be———. The directors elected at the annual meeting to succeed the directors named in the Articles of Incorporation shall be elected for staggered terms of three, two, and one year. As the terms of such directors expire, their successors shall be elected for terms of three years and until their successors are elected and have qualified. Directors shall be members of the corporation and residents of the community where the housing is or will be located. Of the total number directors, at least five must be among the leaders in such community.

Section 4.03. Regular Meetings. A regular annual meeting of the board shall be held, without other notice than these bylaws, immediately after and at the same place as the annual meeting of the members. The board may provide by resolution the time and place, within or not more than——— miles from———, for holding of additional regular meetings of the board without other notice than such resolution.

Section 4.04. Special Meetings. Special meeting of the board may be called by or at the request of the president and shall be called by the secretary at the request of any two directors. The authorized person or persons calling a special meeting of the board may fix any place within or not more than——— miles from——— as the place for holding such meeting.

Section 4.05. Notice. Notice of any special meeting of the board shall be given at least two days previously thereto by written notice delivered personally, or four days notice sent by mail or telegram, to each director at the directors address as shown by the records of the corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at the meeting need not be specified in the notice or waiver of notice of such meeting, unless specifically required by law or these bylaws.

Section 4.06. Quorum. A majority of the board shall constitute a quorum for the transaction of business at any meeting of the board; but if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

¹For projects exceeding \$100,000, the minimum of members should be larger than 25, and should be at least one member per unit in the project.

²For large organizations, a smaller figure may be used if it will not result in a quorum of less than 20 members.

³Number of directors must be not less than 5 nor more than 9.

Section 4.07. **Manner of Acting.** The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by law or by these bylaws. The board may also act by written consent of all the directors of the corporation setting forth the action taken.

Section 4.08. **Vacancies.** Any vacancy occurring in the board shall be filled by the board until the next meeting of the members and until a successor has been elected by the members to fill a vacancy. Such person shall be elected for the unexpired term of office of the predecessor in office.

Section 4.09. **Compensation.** Directors shall not receive any compensation for their services as directors.

Section 4.10. **Directors—Absence from meetings.** Any director who is absent from consecutive meetings without excuse satisfactory to the board shall be deemed to have surrendered the office as director.

Section 4.11. **Directors—Residuary Powers.** The board shall have the powers and duties necessary or appropriate for the administration of the affairs of the corporation. All powers of the corporation except the specifically granted or reserved to the members by law, the articles of incorporation, or these bylaws shall be vested in the board.

Section 4.12. **Directors—Removal from Office.** A director may be removed from office, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the director has been informed in writing of the charges preferred against the director at least 10 days before such meeting. The director involved shall be given an opportunity to be heard at such meeting. Any vacancy created by the removal of a director shall be filled by a majority vote, which may be taken at the same meeting at which such removal takes place.

Article V

Officers.

Section 5.01. **Officers.** The officers of the corporation shall be a president, a vice president, a secretary, and a treasurer. The board may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the board. The offices of secretary and treasurer may be combined and held by one person.

Section 5.02. **Election and Term of Office.**

(a) The officers of the corporation specified in Section 5.01 shall be elected from the membership of the board by the board at its annual meeting or as soon thereafter as feasible. New offices may be created and filled at any meeting of the board. Each officer shall hold office until the next annual election of directors and until a successor shall have duly elected and shall have qualified.

(b) The term of office shall be one year. Election of officers shall take place at the annual board meeting and shall be by ballot cast by qualified directors. A plurality of votes cast shall elect.

Section 5.03. **Removal.** Any officer elected or appointed by the board may be removed by the board by two-thirds vote of the remaining directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

Section 5.04. **Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board by majority vote for the unexpired portion of the term.

Section 5.05. **President.** The president shall be the principal executive officer of the corporation and shall in general supervise and control all the business and affairs of the corporation. The president shall preside at all meetings of the members and of the board. The president may sign, with attestation of the secretary or any other proper officer of the corporation authorized by the board, any deeds, mortgages, bonds, contracts, or other instruments which the board authorizes to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board or these bylaws or statute to some other officer or agent of the corporation and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board from time to time.

Section 5.06. **Vice President.** In the absence of the president or in the event of his inability or refusal to act, the vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned by the president of the board.

Section 5.07. **Treasurer.** The treasurer shall give a bond for the faithful discharge of duties in such sum and with such surety or sureties as the board shall determine. The treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation, from any source whatsoever, deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VIII of these bylaws; and in general perform all duties incident to the office of treasurer and such other duties as from time to time be assigned by the president or the board.

Section 5.08. **Secretary.** The secretary shall keep the minutes of the meeting of the members and the board in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of and see that the seal of the corporation is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member, which shall be furnished to the secretary by such member; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or the board.

Article VI

Order of Business.

Section 6.01. **Order of Business.** The order of business at any regular or special meeting of the members or the board shall be:

- (a) Reading and approval of any unapproved minutes.
- (b) Reports of officers and committees.
- (c) Unfinished business.
- (d) New business.
- (e) Adjournment.

Section 6.02. **Parliamentary Procedure.** On question of parliamentary procedure not covered in these bylaws, a ruling by the president shall prevail.

Article VII

Committees.

Section 7.01. **Committees of Directors.** The board of directors, by resolution adopted by majority of the directors in office, may designate one or more committees, each of which shall consist of one or more directors, which committees, to the extent provided in said resolution shall have and exercise the authority of the board in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board, or any individual director, of any responsibility imposed upon the board or any individual director by law.

Section 7.02. **Other committees.** Other committees not having and exercising the authority of the board in the management of the corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution members of each such committee shall be members of the corporation, and the president of the corporation shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgement the best interest of the corporation shall be served by such removal.

Section 7.03. **Term of Office.** Each member of a committee shall continue as such until the next annual meeting of the members of the corporation and until a successor or appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

Section 7.04. **Chairman.** One member of each committee shall be appointed chairman by the persons authorized to appoint the members thereof.

Section 7.05. **Vacancies.** Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 7.06. **Quorum.** Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7.07. **Rules.** Each committee may adopt rules for its own government not

inconsistent with these bylaws or with rules adopted by the board of directors.

Article VIII

Contracts, Checks, Deposits, and Funds.

Section 8.01. Contracts. The board may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation; and such authority may be general or confined to specific instance.

Section 8.03. Deposits. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board may select.

Section 8.04. Gifts. The board may accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the corporation.

Article IX

Certificates of Membership.

Section 9.01. Certificates of Membership. The board may provide for the issuance, and determine the form of certificates evidencing membership in the corporation. Such certificates shall be signed by the president and the secretary, sealed with the seal of the corporation, and consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the corporation. If any certificate becomes lost, mutilated, or destroyed, a new certificate may be issued upon such terms and conditions as the board may determine.

Section 9.02. Issuance of Certificates. When a member has been elected to membership and has paid any dues that may then be required, and delivered to the member by the secretary.

Article X

Books and Records.

The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, the board, and committees having any of the authority of the board of directors, and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and record of the corporation may be inspected by any member, or members agent or attorney, for any proper purposes at any reasonable time. The board shall cause an audit of the records of the corporation to be made each year by a competent auditor.

Article XI

Fiscal Year.

The fiscal year of the corporation shall begin on the first day of January and end on the last day of December in each year.

Article XII

Seal.

The board shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words, "corporate seal."

Article XIII

Waiver of Notice.

Whenever any notice is required to be given under the provisions of the statutes of said State or the articles of incorporation or the bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XIV

Repeal or Amendment of Bylaws.

Section 14.01. These bylaws may be repealed or amended by a majority vote of the members present at any annual meeting of the members, or at any special meeting of the members called for such purpose, at which a quorum is present: *Provided, however*, No such action shall change the purposes of the corporation so as to impair its rights and powers under the laws of said State, or to waive any requirements of bond or any provision for the safety and security of the property and funds of the corporation or its members or to deprive any member without an express assent of rights, privileges, or immunities then existing. Notice of any amendment.

The undersigned secretary of the corporation identified in the foregoing bylaws does hereby certify that the foregoing bylaws were duly adopted by the members of said corporation, as bylaws of said corporation, on the _____ day of _____ 19____ at a duly called and constituted meeting of the members, and that they do now constitute the bylaws of said corporation.

Secretary _____
(Corporate Seal)

Exhibit G

RRH Loans and the HUD Section 8 Housing Assistance Payments Program (Existing Units)

I. *General*. This Exhibit contains the policies and procedures that will be followed by the Farmers Home Administration (FmHA) to permit the utilization of existing Section 515 rural rental housing (RRH) units for leasing under the Department of Housing and Urban Development (HUD) Section 8 Housing Assistance Payments Program.

II. *Applicability*. All FmHA RRH borrowers are authorized to utilize the procedure outlined in this Exhibit and the HUD Section 8 Housing Assistance Payments Program for existing housing as outlined in HUD's regulations 24 CFR Part 882 (Federal Register Vol. 41, Part IV dated May 13, 1976). To promote the use of the Section 8 Housing Assistance Payments Program with existing projects, the following action should be taken:

A. District Directors should inform all RRH borrowers operating in the area of their jurisdiction of the contents of this Exhibit.

B. The HUD Section 8 program could benefit any eligible tenant in an RRH project who is paying more than 25 percent of the tenant's income for rent. Therefore, RRH borrowers should advise tenants occupying a unit of a project who are paying more than 25 percent of their adjusted income for housing of the possibility of obtaining Section 8

housing assistance payments. *Section 8 assistance for existing housing is administered by local housing agencies authorized by HUD to administer the program in the area.* In areas where no housing agency has been established to administer the program, interested citizens and the local government may wish to establish such an agency.

III. FmHA policies concerning rental rates and payments.

A. Under the Section 8 Housing Assistance Payments Program, HUD will pay that portion of the tenant's rent including utility allowance in excess of 15-25 percent of the household's income. The contract rent to be established under the HUD Section 8 program will be as follows: (1) For borrowers with a 3 percent direct RRH loan and borrowers operating in accordance with interest credit Plan I, the contract rent will be the market rental rate for the units as determined by the current approved annual budget using a 3 percent amortization factor for principal and interest payments, (2) for borrowers operating without interest credit the contract rent will be the market rental rate for the unit as determined by the current approved annual budget using the amortization factor for the note rate of interest for principal and interest payments, (3) for borrowers operating in accordance with interest credit Plan II, the contract rent will be the basic rental rate as determined by the current approved annual budget using a 1 percent interest amortization factor for principal and interest payments.

B. The method of calculated and transmittal of the scheduled payment to the Finance Office will be in accordance with Exhibit B of this Subpart.

IV. Responsibilities.

A. *Household*. A household must obtain a Certificate of Household Participation to obtain Section 8 assistance. A household receiving housing assistance under the Section 8 program will be responsible for fulfilling all of its obligations under the Certificate of Household Participation issued to it by the Public Housing Agency (PHA) and under the lease with the owner.

B. *Owner (FmHA Borrower)*. The owner, upon being presented a Certificate of Household Participation, shall contact and enter into a Housing Assistance Payments Contract with the PHA and a lease with the tenant. Owners shall be responsible (and subject to review or audit by the PHA or HUD) for performing all of their obligations under the contract and lease.

C. FmHA.

1. FmHA, in accordance with existing regulations, will be responsible for normal loan servicing and supervision, including but not limited to:

a. Obtaining and reviewing all reports from the borrower in accordance with Supart G of Part 1802 of this chapter, (FmHA Instruction 430.2).

b. Review and approval of budgets and rental rates; and

c. Collection of required payments and review of the borrower's establishment and maintenance of required accounts.

2. FmHA will not be responsible for the requirements and conditions of the contract

entered into between the PHA and the owner but will cooperate with HUD and the PHA to the extent possible to assure that the borrower carries out his obligations under the contract.

V. Special conditions.

A. Eligibility.

1. The PHA will determine a household's eligibility before the Certificate of Household Participation is issued. To be eligible for Section 8 assistance, the household's income as determined by HUD may not exceed 80 percent of the median income for the area. The household's eligibility for housing assistance payments under the Section 8 program will continue until the amount payable by the household equals or is greater than the contract rental rate. However, when 25 percent of the household's income equals or is greater than the contract rental rate chargeable for the unit, the household may still be able to occupy a rental unit under FmHA interest credit programs if 25 percent of the family's income is greater than the lowest established rental rate for the unit.

2. Form FmHA 444-8, "Tenant Certification," will not be required for tenants who have obtained a Certificate of Household Participation from the PHA. A copy of the Certificate of Household Participation will, however, be provided to the FmHA District Director.

3. The tenant's adjusted household income must not exceed the maximum income limitations as authorized by FmHA for the project.

B. Security deposits. According to HUD regulations, the owner may require a household to pay a security deposit in an amount equal to the amount payable by the household toward one month's gross rent. Under HUD regulations, if a household vacates a unit and the security deposit is insufficient, the owner may claim reimbursement from the PHA in an amount not to exceed one month's contract rent.

C. Payment for vacated units. According to HUD regulations, if a household vacates the unit in violation of the provisions of the lease, the owner may receive housing assistance payments in the amount of 80 percent of the contract rent for a period not exceeding 80 days or the expiration or other termination of the lease.

D. Limitation of owners participation in the program. HUD's regulation provides that assistance under Section 8 will not exceed 40 percent of the total number of units in the project; however, this limitation may be exceeded for the purpose of relieving hardship of a particular household or households with the approval of the HUD Regional Administrator.

E. Special problems. Any problems on utilizing the HUD Section 8 program for existing RRH projects not covered by this Exhibit should be referred to the National Office by the State Director.

Exhibit H.—RRH Loans and the HUD Section 8 Housing Assistance Payments Program (New Construction)

I. General. The attached Exhibit H-1 is the Memorandum of Understanding between the Department of Housing and Urban Development (HUD) and the Department of

Agriculture, Farmers Home Administration (FmHA), concerning the application processing and operation of rural rental projects involving HUD Section 8 housing assistance payments. The Memorandum provides for a set aside of contract authority under Section 8 of the U.S. Housing Act of 1937 for new construction projects financed by FmHA under Section 515. Only units charged against this set aside are eligible under these procedures. This Exhibit and HUD's regulations published in 24 CFR Part 883 Subparts G and H contain the policies and procedures that will be followed by FmHA in implementing and carrying out the provisions of the Agreement.

II. Establishment of Interest Rate for Section 8 Units. FmHA will provide an interest reduction for all units under Section 8, except units in projects operated on a profit basis and approved after September 20, 1977. Since the advantage of this interest reduction must be passed through to the tenant in the form of lower rents, the budget for the Section 8 units should not reflect an excess of income over operating and maintenance expenses, debt repayment, reserve requirements, and for limited profit borrowers, a return on initial investment. If the borrower will operate the project on a nonprofit or limited profit basis, the payment of interest on the RRH loan will be based on at least a 1 percent interest reduction below the established interest rate for RRH loans for the units of a project under HUD's Housing Assistance Payments Contract (Contract). However, when the budget is prepared on the basis of a 1 percent reduction and the proposed Contract Rents exceed the applicable Fair Market Rents, the State Director may approve an interest reduction of 2 percent below the note rate of interest for the units utilizing the HUD Housing Assistance Payments Program. The State Director, in making this determination, must be sure that the budget is accurate and reflects reasonable and typical costs for the area and is necessary to make the project feasible. If the reduction of 2 percent below the interest rate of the note does not result in rental rates which are equal to or less than the Fair Market Rate, the State Director will submit a request including the budget, a narrative budget analysis, and other supporting data, to HUD's Field Office Director for approval of higher Contract Rents. HUD may approve increases of up to 20 percent above the Fair Market Rents. The interest rate shown on the note, however, will be in accordance with Exhibit B of FmHA Instruction 440.1, available at any FmHA office. This reduction in interest or interest credit will be accomplished in the manner indicated for Plan I and Plan II in Exhibit B of this Subpart and in accordance with paragraph IV of this Exhibit.

III. Section 8 Contract Rents. The Section 8 Contract Rent rates will be determined by FmHA. The Contract Rents will be determined as outlined in paragraphs II and IV of this Exhibit. The State Director should contact the HUD field office to obtain the Fair Market Rents (including additional allowance for the elderly) in effect for the proposed project's location at the time the certification is made.

IV. Budgets and Interest Credit

Agreements. Budgets and interest credit agreements must be prepared in accordance with Exhibit B and the following:

A. Total Project Under Section 8. If a project is developed with all units of the project covered by Section 8, one budget will be prepared. The budget will be based on an interest rate which has been set for the project in compliance with paragraph II of this Exhibit. When applicable, a Form FmHA 447-7, "Interest Credit and Rental Assistance Agreement" will be entered into with the borrower to show the amount of interest reduction. (RRH and RCH loans) Check Plan I S 8 of the agreement and show the amount of interest credit as the difference between the amortized payment at the note rate of interest and the amortized payment calculated at the effective interest rate.

B. Mixed Project for Profit. If a mixed project is developed (a project with only a part of the units covered by Section 8 contract) and the borrower is operating on a profit basis, one budget will be prepared based on market rent. The market rent and contract rent set must be the same. If the borrower agrees to operate on a limited profit or nonprofit basis, paragraph IV C of this Exhibit will apply.

C. Mixed Project for Nonprofit and Limited Profit. When a mixed project is developed (a project with only a part of the units of the project covered by HUD's contract and a part of the units to utilize interest credit Plan II in accordance with paragraph IV B of Exhibit B of this Subpart, three budgets must be prepared. The budgets must be for basic rent, Section 8 contract rent, and market rent. An "Interest Credit and Rental Assistance Agreement", will be entered into with the borrower to allow interest credit on all units. Check Plan II of the agreement. The loan payments will be based on the amortized payment at 1 percent interest plus all overages. The amount of overage for those units under Section 8 contract will be the difference between the basic rent and the contract rent. The amount of overage for those units not under Contract will be in accordance with Exhibit B of this Subpart.

V. Compliance and Certifications

Required. To comply with the provisions of the Memorandum of Understanding with HUD, certain requirements must be met and certifications made. These requirements and certifications are listed below:

A. Minimum Property Standards.

1. Since the FmHA has adapted HUD's Minimum Property Standards (MPS) 4910.1, no additional requirement other than compliance with Subpart A of Part 1804 of this Chapter (FmHA Instruction 424.1), shall be necessary to assure that the housing is planned in accordance with the MPS. However, appropriate state and local laws, codes, ordinances and regulations must also be met.

2. The borrower's architect engineer will provide a certification that the final drawings and specifications meet all MPS, state and local laws, codes, ordinances, and regulations.

B. Rent Certification. The State Director will certify for each project that the rental rates to be used in the contract for the units

of the project are reasonable based on quality, location, amenities, management and maintenance services, and unless HUD has authorized higher rates, do not exceed the applicable Fair Market Rents for newly constructed Section 8 units as published in the Federal Register and in effect at the time the certification is made. Exhibit H-3 contains the necessary language for this certification.

C. *Site and Neighborhood Standards.* The State Director will certify that the location of each project is in compliance with § 1944.215(q) of this subpart. Exhibit H-4 will be used to assist in determining compliance with this requirement. Exhibit H-3 contains the necessary language for this certification.

D. *Equal Opportunity.*

1. FmHA agrees to assure compliance with the requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 and Executive Order 11246 in accordance with FmHA Instruction 1901-E. Obtaining properly executed Form FmHA 400-1 "Equal Opportunity Agreement," Form FmHA 400-4, "Nondiscrimination Agreement," and Form FmHA 400-6, "Compliance Statement," and completion and transmittal of Form FmHA 400-3, "Notice to Contractors and Applicants," will meet those requirements.

2. To comply with Executive Order 11063 and Title VIII of the Civil Rights Act of 1968, the applicant must complete HUD Form 935.2, "Affirmative Fair Housing Marketing Plan." The State Office will obtain the form and instructions for filing from the HUD area office and supply them to District Offices for distribution to applicants. The completed form will be reviewed for adequacy and approved by the loan approval official. Marketing of the units must begin no later than 90 days before project completion. To further comply with Executive Order 11063 the mortgage must contain the covenants as required in § 1944.236(b) of Subpart E to Part 1944 of this chapter.

3. The applicant must agree to and sign a certification that there will be compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968 as it pertains to business opportunity, training, and employment of lower income residents. Exhibit H-5 may be used for this purpose.

4. The State Director will prepare a certificate for each project that all of the above equal opportunity requirements will be met. Exhibit H-3 contains the necessary language for this purpose.

E. *Environmental Standards.*

1. FmHA Instruction 1901-G, outlines the program actions requiring environmental assessment and, if found necessary, an environmental impact statement. FmHA Instruction 1901-G sets the threshold for multiple housing projects at 50. The references to 50 will be disregarded in the case of section 8/515 loans and a threshold of 5 will apply to conform with the Memorandum of Understanding with HUD. Consideration must also be given to the effects of the environment and neighborhood activity on the project. The proposal will be rejected if, after appropriate modifications, there would remain environmental impacts

which are unacceptable under National Environmental Policy Act (NEPA) and FmHA policies. All other requirements of FmHA Instruction 1901-G will be followed.

2. In compliance with paragraph VI C of the Memorandum of Understanding, the State Director will prepare a certification for each project that it complies with the National Environmental Policy Act and all rules, regulations, and requirements issued by FmHA pursuant thereto and that an environmental assessment on projects consisting of a total of 5 units or more has been made. Exhibit H-3 contains the necessary language for this purpose.

F. *Relocation.* Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 applies to Public Housing Agency applicants only. It will be the responsibility of the applicant to provide any assistance required for relocation of occupants of the site on which the section 8/515 rural rental project will be located. FmHA loan funds are not available for this purpose. Generally, sites will not be selected which are occupied if relocation is necessary.

G. *Davis-Bacon Wage Rates.*

1. The provisions of the Davis-Bacon Act apply to all section 8/515 projects with 9 or more Section 8 assisted units. FmHA Instruction 1901-D, outlines the procedures to follow to comply with this Act.

2. In compliance with paragraph VIII B of the Memorandum of Understanding, the State Director will prepare a certification for each project that there will be compliance with the Davis-Bacon Act. Exhibit H-3 contains the necessary language for this purpose.

H. *Other Federal Requirements.*

1. § 1944.215(r) of this subpart outlines the requirements of the Clean Air Act and Federal Water Pollution Control Act.

2. FmHA Instruction 1901-F and § 1944.215(i) of this subpart states that the applicant must comply with the requirements of the National Historic Preservation Act, the Archeological and Historic Preservation Act of 1974, and Executive Order 11593.

I. *Previous Participation.* It will be the responsibility of all applicants and applicant principals holding an interest in the entity to complete HUD Form 2530, "Previous Participation Certificate." (The State Office will obtain the form and instructions for filing from HUD and supply them to District Offices for distribution to applicants.) The complete form will be transmitted to HUD at the same time as transmitting the Form AD-621 "Preapplication for Federal Assistance," for their review, clearance and comment.

J. *Project Completion.*

1. The borrower's inspecting architect will provide a certification as outlined in Exhibit H-6. This certification and other data required is a part of the backup material necessary for the State Director to provide HUD with the certification required to comply with paragraph XII B of the Memorandum of Understanding.

2. The State Director, after receipt of the borrower's inspecting architect's certification and compliance with other requirements, will prepare a certification similar to Exhibit H-2 for transmittal to HUD indicating that:

a. The project was completed in accordance with the requirements in the

Agreement to Enter Into a Housing Assistance Payments Contract.

b. The project is in good and tenantable condition.

c. The project has been constructed in substantial compliance with drawings and specifications except for ordinary punchlist items or incomplete work awaiting seasonal opportunity.

d. There has been no change in management capability.

VI. *Processing Application.*

A. Applicants desiring to develop projects utilizing the Section 8/515 loan program should contact the County Supervisor or District Director before completion of the requirements of the Form AD-621. If the applicant desires to submit a preapplication, after counseling with FmHA personnel, the preapplication will be accepted and processed in accordance with existing regulations and this Exhibit. In addition to items required in Exhibit A-6, the applicant will submit required copies of HUD Form 2530. If obtainable, the applicant should also submit comments on the proposed project from the local governing body in which the project is to be located.

B. The District Director, upon receipt of Form AD-621 and required attachments, will review the preapplication for completion and accuracy. The District Director will then forward the completed preapplication to the State Director for submission of copies to HUD for review and comments. A letter of transmittal will be prepared by the State Director to HUD listing the data submitted for review.

C. Upon receipt of comments from HUD, Form AD-622, "Notice of Preapplication Review Action," will be completed and transmitted to the applicant outlining any further data required or conditions which must be met before or in completion of Form AD-625, "Application for Federal Assistance (Short Form)." The applicant should at this time be advised of the requirement for completion of Exhibit H-5.

D. Upon completion of the Form AD-625 and other requirements by the applicant, the District Director will revise the information for completeness and accuracy, prepare comments and recommendations, and submit the docket to the State Director for review and approval in accordance with existing regulations. The State Director will prepare and submit the required certifications to HUD. The Agreement to Enter into Housing Assistance Payments Contract will then be completed by HUD and the owner (applicant).

E. Construction of the project will not be permitted until (1) Agreement to Enter into Housing Assistance Payments Contract has been executed, (2) the loan funds have been obligated, (3) interim financing has been arranged, or in case of multiple advances, the loan has been closed.

F. When the project is completed, the State Director will prepare the Certification of Project Completion (Exhibit H-3), and submit it to HUD. HUD will prepare the Housing Assistance Payments contract for execution. Upon execution, the project will be considered to be in operation.

G. All borrowers will provide reports to FmHA in accordance with Subpart G of Part

1802 of this chapter, (FmHA Instruction 430.2), FmHA Instructions 1944-E, and applicable loan agreements or loan resolutions. Borrowers will also be required to comply with HUD's reporting requirement for Housing Assistance Payments Contract. FmHA will inform HUD of any irregularities found upon review of the borrower's reports submitted to FmHA.

VII. *Tenant Certifications.* Form FmHA 448-8, "Tenant Certification," need not be required of tenants who have executed Form HUD 52659, "Application for Tenant Eligibility and Recertification." A copy of Form HUD 52659 will, however, be provided to the FmHA District Director.

Memorandum of Understanding on Use of Section 8 of the U S Housing Act of 1937 and Section 515 of the Housing Act of 1949

I. Introduction

For the purpose of encouraging and facilitating the use of assistance under Section 8 of the United States Housing Act of 1937 and Section 515 of the Housing Act of 1949, as amended, to provide newly constructed housing for lower-income families in rural areas, the Department of Agriculture [hereinafter referred to as the Farmers Home Administration (FmHA)] and the Department of Housing and Urban Development (HUD) hereby agree to the policies, procedures and joint working arrangements set forth in this Memorandum. The Secretary of each Department will expedite all necessary actions to implement this memorandum.

II. Property Standards

FmHA agrees that any Section 515 Rural Rental Housing Project to be assisted by the Section 8 Housing Assistance Payments Program pursuant to this Memorandum will be in accord with HUD Minimum Property Standards (7 CFR 1804.3) and appropriate State and local laws, codes, ordinances and regulations.

III. Contract and Fair Market Rents

A. FmHA agrees to provide interest credit on any newly constructed Section 515 project to be assisted by Section 8 housing assistance payments. The effective interest rate applicable to the Section 8 units will be reduced by at least one percentage point below the FmHA interest rate in effect for Section 515 loans at the time of loan closing. The requirement that an interest credit be provided shall not apply to projects approved after the effective date of this paragraph and which are operated on a profit basis as defined by FmHA regulations.

B. HUD agrees to accept FmHA certification on a project-by-project basis that Contract Rents are reasonable based on the quality, location, amenities and management and maintenance services to be provided and do not exceed the applicable Fair Market Rents for newly constructed Section 8 units. HUD will provide the FmHA State Directors on request with the current applicable Fair Market Rents for newly constructed Section 8 units as published in the *Federal Register* and in effect at the time the certification is made.

C. HUD agrees to provide the FmHA State Director on request with the current income

limits for determining eligibility for the Section 8 program.

IV. Site and Neighborhood Standards

The site (location) and neighborhood standards to be set forth in the revised FmHA regulations which have been agreed to by HUD and FmHA shall be applicable to all newly constructed Section 515 projects to be assisted by Section 8 housing assistance payments. HUD agrees to accept FmHA's certification as to compliance with such standards on a project-by-project basis.

V. Equal Opportunity Requirements

A. FmHA agrees to assure compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and Section 3 of the Housing and Urban Development Act of 1968 and will issue regulations pursuant thereto.

B. HUD agrees to accept certification from FmHA that projects approved by FmHA will be developed and operated in accordance with the provisions of paragraph V (A) above.

VI. Environmental Standards

A. HUD and FmHA have issued regulations to implement the National Environmental Policy Act (NEPA) in accordance with guidelines issued by the Council on Environmental Quality (CEQ). HUD and FmHA agree to discuss their environmental regulations, procedures and forms to achieve uniform thresholds and forms.

B. FmHA shall comply with NEPA and all rules, regulations and requirements issued by FmHA pursuant thereto including:

1. Environmental assessments will be made for such projects with five or more units.

2. The suitability and effect of the existing environment will be considered for each project for which an assessment is required, as well as the impacts that would result from a project approval;

3. Proposals shall be rejected if, after appropriate modifications to be a proposal, there would remain environmental impacts which are unacceptable under NEPA and FmHA policies.

C. HUD agrees to accept the certification that sites approved by FmHA are in accordance with the provisions of paragraph VI (B) above.

VII. Relocation

In the case of a Public Housing Agency (PHA)-Owner project which is to be constructed on a site which has occupants, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be met.

VIII. Davis-Bacon Wage Rates

A. FmHA agrees to assure that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), shall be paid to all laborers and mechanics employed in the development of any new construction projects with nine or more assisted units.

B. HUD agrees to accept a certification on a project-by-project basis from FmHA that there will be compliance with the provisions of paragraph VIII (A) above.

IX. Other Federal Requirements

FmHA agrees to comply with the following requirements:

1. Clean Air and Federal Water Pollution Control Act and all rules and regulations and requirements issued by FmHA pursuant thereto.

2. The National Historic Preservation Act (Pub. L. 93-291) and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

X. Distribution of Housing Assistance Funds

A. Housing assistance funds shall be allocated by HUD in accordance with the requirements of Section 213(d)(1) of the Housing and Community Development (HCD) Act of 1987 and HUD regulations pursuant thereto.

B. The HUD field office director, in planning the utilization of housing assistance funds in accordance with the Section 213(d)(1) factors, shall consult with the appropriate FmHA State Director(s) in order that the use of the housing assistance funds be coordinated as nearly as possible with FmHA Section 515 activities.

C. HUD agrees to make a set-aside during Fiscal Year 1976, including the transition quarter, sufficient Section 8 contract authority to assist not less than 4,000 newly constructed dwelling units to be financed by the FmHA under the Section 515 rural rental housing program. Subject to congressional authorization of contract authority, HUD agrees to make a set-aside of such assistance for not less than 10,000 units in subsequent fiscal years.

D. To the extent any Section 8 housing assistance funds set-aside for use with Section 515 projects are not committed to such projects 45 days prior to the end of any fiscal year, HUD may withdraw and redistribute such funds except that HUD will not withdraw any Section 8 funds which FmHA advises HUD will be committed before the end of the fiscal year. Funds shall be deemed to be committed for such projects after receipt and review by HUD of the Form AD-621 (Preapplication for Federal Assistance) and the verification by HUD's Regional Accounting Division of the availability of funds.

XI. Basic Processing

A. When FmHA has a completed Form AD-621 (Preapplication for Federal Assistance) for a Section 515 project for which a commitment for Section 8 assistance is desired, it shall transmit a copy of the completed form and all completed attachments with a covering letter stating that Section 8 is desired. Upon receipt thereof, the HUD field office director shall initiate reviews under Section 213 of the HCD Act, all reviews to establish acceptability under HUD's previous participation requirements, and any reviews necessary to establish consistency with the Section 8 requirements. HUD shall indicate to FmHA any negative information on the proposed project as submitted, the availability of funds and that funding is contingent upon compliance with Section 213 requirements and clearance under the previous participation requirements.

B. Such reports as may be deemed necessary by HUD and FmHA concerning Section 8/Section 515 projects will be provided to HUD.

XII. Execution of Agreement To Enter Into Housing Assistance Payments Contract and Housing Assistance Payments Contract

A. HUD will prepare an Agreement to Enter Into a Housing Assistance Payments Contract for execution by the owner only after receipt of certifications on a project-by-project basis by FmHA. The certifications to be submitted by this time are as specified in paragraphs III(B), IV, V(B), VI(C) and VIII(B).

B. HUD will prepare a Housing Assistance Payments Contract for execution by HUD and the owner after the project is completed and FmHA submits on a project-by-project basis, certifications that:

1. The project was completed in accordance with the requirements of the Agreement to Enter Into Housing Assistance Payments Contract.

2. The project is in good and tenable condition.

3. The project has been constructed in substantial compliance with drawings and specifications except for ordinary punchlist items or incomplete work awaiting seasonal opportunity.

4. There has been no change in management capability.

C. If HUD has any information or other substantial reason to question the correctness of any FmHA certification, HUD shall promptly bring the matter to the attention of FmHA and FmHA shall advise HUD of its final determination in the matter.

XIII. HUD Review Responsibilities

A. FmHA assumes no responsibility for assuring compliance by the owner with the terms of the Housing Assistance Payments (HAP) Contract. FmHA and HUD agree to attempt to work out procedures for FmHA to assume responsibility for Housing Assistance Payments Contract compliance for Private-Owner and Public Housing Agency Owner-projects.

B. It is understood that to carry out its responsibilities for the administration of the Section 8 program, HUD may audit and review FmHA Section 8 related activities for compliance with outstanding HUD requirements covered by the provisions of this Memorandum of Understanding.

XIV. Interdepartmental Task Force

FmHA and HUD agree to the establishment of an interdepartmental task force, consisting of Headquarters and field office personnel, which will periodically, and as needed, convene for the purpose of reviewing program issues and recommending solutions thereto to assure the effective coordination of the Section 8 and Section 515 in areas served by the FmHA.

XV. Training

FmHA and HUD agree to make available appropriate personnel to carry out any interdepartmental training that may be necessary to implement an effective combination of the Section 8 and Section 515 programs.

Secretary of Agriculture.

Date _____

Secretary of Housing and Urban Development.

Date _____

Section 8 Housing Assistance Payments Program: Information and for New Construction

The Section 8 Housing Assistance Payments Program was authorized by the United States Housing Act of 1937 as amended by Section 201 of the Housing and Community Development Act of 1974.

Basic Concept

The Department of Housing Urban Development (HUD) will provide housing assistance payments on behalf of eligible lower-income households (i.e. households whose income does not exceed 80 percent of median income for the locality) occupying newly construction housing. This payment will make up the difference between the approved rent for the unit and the amount the household is required to pay which is not less than 15 percent nor more than 25 percent of the household's adjusted income.

New Construction and Substantial Rehabilitation

Who May Participate

Housing projects may be owned by private owners, both profit-motivated and nonprofit, and by public housing agencies.

How Do They Participate

Applicants will submit required data to Farmers Home Administration (FmHA) County or District Offices. If both the preliminary and final data submitted is acceptable to FmHA and HUD, HUD will enter into an agreement that upon completion of the project, it will enter into a Housing Assistance Payments Contract with the owner for a specified term. Under this Contract, HUD will make housing assistance payments with respect to units occupied by eligible households.

Initial Maximum Rents to Owners

The rents approved under the Contract (Contract Rents) may not exceed the HUD established Fair Market Rents for new construction for the housing market area in which the project will be located, and must be reasonable in relation to the quality, location, amenities, and the management and maintenance services provided by the owner.

Rent Adjustments

Contract rents to the owner will be adjusted annually by the HUD established Automatic Annual Adjustment Factor. Special additional adjustments may be approved to reflect actual and necessary expenses of owning and maintaining the project which have resulted from substantial general increases in real property taxes, utility rates or similar cost (i.e., assessments and utilities not covered by regulated rates), but only to the extent that such general increases are not compensated for the Automatic Annual Adjustments.

Term of Housing Assistance Payments Contract

The maximum term for the Contract is 20 years, or 40 years in the case of a project owned by a State or local agency. The criteria for determining the actual term are stated in the respective HUD regulations.

Responsibilities of the Owner

The owner will be responsible for performance of all maintenance and management functions (including taking of applications, selection of households, collection of rents, termination of tenancies, reexamination of household income and compliance with equal opportunity requirements). In connection with selection of families, the owner is responsible for leasing at least 30 percent of the units to Very Low-Income households (i.e., households whose income does not exceed 50 percent of the median income for the locality). The owner may contract with another entity to perform such services provided the management contract will not shift any of the owner's responsibilities or obligations. However, no entity which is responsible for administration of the Contract (i.e., a PHA in the case of a Private-Owner/PHA project) may contract to perform such services.

Suggested Proposal Certification Format (Section 8/515 Program)

(Date)

To: (HUD Field Office Manager)

(Address)

Subject: (Name of Project), (HUD Project Number), (Project Address: Street, Municipality, State), (Owner Name and Address)

This is to certify that:

(1) I have determined the Contract Rents to be reasonable based on the quality, location, amenities and management and maintenance services to be provided, and are based a percent interest reduction(s) that would otherwise be applicable to the Contract Units:

Type of unit	Size	Number of contract units	Contract rent	Allowance for utilities	Gross rent
(Detached, semi-detached, row, walk-up, elevator)	(Number of bedrooms)		\$	\$	\$

If the Gross Rents are above the applicable Fair Market Rent, the cost and budget analysis and date are attached.

(2) I have determined that the site complies with the Farmers Home Administration site and neighborhood standards published at 7 CFR 1944.215 (q).

(3) I have determined that the Owner has certified that the project will be developed and operated in accordance with Title VI of the Civil Rights Act of 1974; Title VIII of the Civil Rights Act of 1968; Executive Orders 11063 and 11246; and Section 8 of the Housing and Urban Development Act of 1968.

(4) I have determined that the site is approved on the basis of the FmHA environmental rules, regulations and requirement, and the following additional procedures were used in determining the approvability of the site:

1. Environmental assessments were made for projects with 5 or more units;

2. The suitability and effect of the existing environment was considered for each project for which an assessment is required, as well as the impacts that would result from a project approval.

(5) I have determined that the Owner will pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), to all laborers and mechanics employed in the development of any new construction project with nine or more assisted units.

(Signature of State Director)

Equal Opportunity Site and Neighborhood Standards Checklist

1. Is the site located in an area of minority concentration? ¹ ☐ Yes ☐ No

2. If answer to question 1 is Yes, do sufficient and comparable housing opportunities exist outside the minority area for minority households in the income range to be served by the proposed project? ☐ Yes ☐ No

3. If Yes, the project can be approved.

4. If no, has a fully documented justification acceptable to the reviewer been presented that the project at the proposed site is necessary to meet overriding housing needs which cannot otherwise be met in the market area? ☐ Yes ☐ No

5. If yes, the reviewer may approve the site, noting in writing the reasons for approval.

6. If answer to number 1 is No, is site located in a racially mixed area? ☐ Yes ☐ No

7. If answer to question number 6 is Yes, will the effect of locating the proposed project in this area be such as to increase significantly the number of minority to nonminority households by fostering a change to predominately minority residency in the area? ☐ Yes ☐ No

8. If answer to number 7 is Yes, disapprove the site.

9. If answer to number 7 is No, the site is acceptable.

¹ An area of minority concentration is defined as any part of a community adjacent to or within the confines of a greater area such as a place, town, village or city, in which the majority of residents are minority.

Certification by the Applicant

I/We, the undersigned, understand that as a condition of obtaining assistance under the HUD section 8 program in connection with section 515 rural rental housing loan from the Farmers Home Administration, that I/we are required to carry out the applicable provisions of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701U, the Davis-Bacon Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and the requirements of the Clean Air and Water Pollution Control Acts. I/We hereby certify that these provisions will be carried out in accordance with applicable regulations."

Name of Applicant: _____

Date: _____

By: _____

Date: _____

By: _____

Exhibit H-6

Guide Letter for Architect's Certification New Construction Inspecting Architect's Certification

This certification applies to the project developed for (name of owner), (address of owner), located at (street address), (city), (county), (state)

I, _____, Registered Architect, to the best of my knowledge, belief and professional judgment, do hereby certify, for the purpose of satisfying FmHA requirements with respect to the subject project, that:

(1) I was responsible for the inspection of construction of the subject project consisting principally of

_____ ¹ _____
In accordance with Working Drawings and Specifications identified as _____², which were the subject of a previous certification to FmHA by the Design Architect;

(2) Inspections were performed by me or under my supervision with frequency and thoroughness required by the generally accepted standards of professional care and judgement;

(3) The project has been completed in conformance with the certified Working Drawings and Specifications for the project or approved changes thereto;

(4) The project is in good and tenable condition;

(5) There are no defects or deficiencies in the project except for ordinary punchlist items or incomplete work awaiting seasonal opportunity;

(6) The project has been constructed in accordance with applicable State and local laws, zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from appropriate officials.

Changes in the Working Drawings and Specifications were approved as listed in attachment: _____³

Punchlist or incomplete items are listed in attachment: _____³

Waivers of codes, etc., were obtained as listed in attachment: _____³

Signed _____

Architect _____

Business address _____

Telephone _____

License number _____

Date _____

Warning: Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes of uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years or both.

¹ List number and type of units, describe property, etc.

² Identify Drawings and Specifications including information normally found in the Title Block of drawings.

³ Identify attachment.

Exhibit H-7

Suggested Project Completion Certification Format (Section 8/515 Program)

(Date) _____

To: (HUD Field Office Manager) (Address)
Subject: (Project Name) (HUD Project Number)

This to certify that:

(1) The project has been completed in accordance with the requirements of the Agreement;

(2) The project is in good and tenable condition;

(3) There are no defects or deficiencies in the project other than punchlist items, or incomplete work awaiting seasonal opportunity;

(4) There has been no change in management capability.

(Signature of State Director)

Exhibit I.—Memorandum of Understanding Between Farmers Home Administration And Administration on Aging

A. Introduction

The lack of adequate, affordable housing is a serious problem for the elderly, particularly those who live in nonmetropolitan areas. Data indicate that 44 percent of the substandard housing in rural America is occupied by persons 60 years of age and older. Moreover, at least 60 percent of older persons living in rural communities occupy homes that were built prior to 1920.

The housing requirements for older persons are significantly different than those for the rest of the population, due to the progressive limitations of their mobility and physical capabilities over time. This creates seemingly contradictory needs and demands, with the progressive need for medical and support services vying with the ability to maintain an active life. Congregate housing is an alternative for the elderly who need an assisted residential living environment. It offers the functionally impaired or socially deprived but not ill elderly residential accommodations with supporting services to assist them in maintaining or returning to an independent or semi-independent life style and prevent premature or unnecessary institutionalization as they grow older.

In light of this, the Farmers Home Administration (FmHA) of the U.S.

Department of Agriculture and the Administration on Aging (AOA) of the U.S. Department of Health, Education, and Welfare have joined forces to enhance the quality of housing provided for the rural elderly.

B. Objectives

The Memorandum of Understanding encourages and fosters coordinated efforts between FmHA and AOA to meet these objectives:

1. To support a joint demonstration to establish in several selected communities model congregate housing facilities for the elderly with adequate supportive services. Some of the services provided the occupants will also be available for other elderly persons residing in the community.
2. To ensure the participation of local FmHA and AOA counterparts as well as the developers and community representatives in the planning, development, and implementation of the model congregate housing and related facilities.
3. To encourage the provision and expansion of outreach and information and referral services in the selected rural communities to inform older residents of this and other FmHA programs from which they may benefit.
4. To encourage the replication of this effort in other rural communities throughout the country.

C. Relevant Programs Administered by FmHA

FmHA administers several programs which can benefit senior citizens (By FmHA definition, persons 62 years of age or over and, in the case of a married couple, only one of whom must be 62 years of age or over).

Under Section 515 of the Housing Act of 1949 as amended, loans for rental housing in rural areas are available to individuals and various types of organizations to provide living units for eligible persons, including the elderly. The Congregate Housing for the Elderly Program is a new use of the Section 515 Rural Rental Housing Loan Program.

Other pertinent FmHA programs from which the elderly may benefit are listed below. All programs are authorized under the Housing Act of 1949 as amended.

1. Section 502, Rural Housing Loans, which may be made available to individuals to buy, build, rehabilitate, improve, or relocate a dwelling and related facilities to be used as permanent residence. The regulations for this program are being revised to allow the addition of a separate independent living unit to be added onto the family dwelling for senior relatives of the immediate family. It is expected that the regulations will be available by June 1979.

2. Section 504, Home Repair Programs, under which low-interest loans and/or grants may be made to owner-occupants who because of inadequate income do not qualify for Section 502 loans to enable them to make basic repairs to their dwellings or to make such dwellings safe and sanitary.

3. Sections 523 and 524, Rural Housing Site Loans, which may be made for the purchase of land and development of building sites for housing.

D. Relevant Programs Administered by the Administration on Aging

Under the authority of the Older Americans Act of 1965, as amended, programs administered by AOA are designed to foster the development of comprehensive and coordinated service systems which promote independence and reduce the need for institutionalization among the elderly. State and Area Agencies on Aging have major responsibilities in the areas of planning, management, and serve as focal points for all matters pertaining to older persons in the State and community. Funds are awarded to State and Area Agencies on Aging to enable them to enter into cooperative arrangements with other agencies and providers of social services to remove individual and social barriers to economic and personal independence for older persons.

In its assigned role as focal point of all aging-related activities at the Federal level, the Administration on Aging is currently directing its efforts in new directions to begin to develop comprehensive community-based service systems in areas throughout the country to meet the needs of the Nation's older population. In order to successfully establish the proposed comprehensive community-based service systems to serve older person, most services, including housing, need to be developed, expanded, or improved in local communities, particularly in rural communities.

Under the new amendments to the Older Americans Act, enacted in October 1978, previous Titles III, V, and VII have been consolidated under one Title III. The new Title III provides for the planning and development of comprehensive and coordinated service systems, authorizing funding and providing for one administrative structure of three key service areas—social service, nutrition services, and senior centers.

Under the new amendments, no State receives less than that received in Fiscal Year 1978. Provisions have been made in the Act, however, to address the special needs of the rural elderly including that provision under Section 307 which requires States to increase their allocations to rural areas by 5 percent.

E. Joint Demonstration Effort

The Farmers Home Administration, under the authority of Section 515 of the Housing Act of 1949, as amended, is implementing its Congregate Housing for the Elderly Program. In doing so, a demonstration effort is being proposed to develop, in six diversified rural areas, model congregate housing projects for older persons with FmHA funds being used to construct the facilities and AOA funds being used to support the service components of those facilities.

F. FmHA

FmHA is earmarking for Fiscal Year 1979 a total of \$6.0 million for the construction of model congregate housing facilities in six (6) rural areas.

G. Criteria for Site Selection

In selecting the sites for demonstration purposes, priority will be given to those areas which meet the following minimum criteria:

1. Areas that provide a diversity of racial and ethnic composition or low-income elderly.
2. Areas with a significant number of persons 62 years of age and older who need and want to occupy rural housing.

3. Areas that are representative of diverse rural communities.

4. Areas known to have poor housing facilities for the elderly.

5. Areas where planning and service areas are or can be covered by Area Agencies on Aging.

6. Areas accessible to central services, that is, shopping, medical facilities, transportation assistance.

7. Areas where State and local officials understand and support the intent and objectives of the joint demonstration program.

8. Areas where there are no other resources to support such an effort.

9. Areas where water and sewer facilities are available.

H. AOA

AOA is reserving grants in the amount of \$500,000 for each year of the 3-year demonstration period beginning in FY 1979. These nonrenewable grants will be provided for the following purposes:

1. To support a full-time Project Director for each site to ensure the successful implementation of this effort. (The Project Director would be selected by the Area Agency on Aging, using as a guide the criteria appearing in this agreement and would be considered a member of the Area Agency Staff.) Such a position is expected to attract persons with some experience in neighborhood organization and community development and with some degree of knowledge and experience in working with aging and housing programs, rural populations, and ethnic and low-income groups. The duties of the Project Director would include:

- a. Seeking the support of community leaders to assure the availability of appropriate and necessary supportive services at the housing site both during the demonstration period and to seek such continued support beyond the demonstration period.
- b. Initiating outreach efforts to identify potential residents.
- c. Conducting a needs assessment survey to identify the housing and housing-related needs for the elderly living in the community.
- d. Working with developers through FmHA to assure that the physical design of the congregate structure reflects the needs of the potential residents.
- e. Arranging for provision of supportive services which, at a minimum, would include: (1) meal service—full or partial; (2) housekeeping elements for those unable to perform these responsibilities; (3) personal care and service for those who need assistance in daily care; (4) transportation and other areas to essential services; and (5) social and recreational activities.
- f. Serving as a resource housing specialist for older persons in the community.

2. To assist in supporting the cost of gap-filling services based on the availability of local resources.

I. Modification/Cancellation Provision

Request for modifications and amendments to the Memorandum of Understanding may be initiated by either party. Such modifications or amendments will only be effective upon mutual agreement by both parties.

Signatures

Dated: January 22, 1979.

Gordon Cavanaugh,
Administrator, Farmers Home
Administration.

Dated: January 23, 1979.

Alex P. Mercure,
Assistant Secretary for Rural Development.

Dated: January 26, 1979.

Bob Bergland,
Secretary of Agriculture.

Dated: January 26, 1979.

Robert Benedict,
Commissioner, Administration on Aging.

Dated: January 26, 1979.

Arabella Martinez,
Assistant Secretary for Human Development
Services.

Dated: January 30, 1979.

Patricia Harris,
Secretary of Health, Education, and Welfare.**Exhibit J**

Loan Resolution of —, 19—

(RRH Loan to Broadly Based Nonprofit
Corporation)

Resolution of the Board of Directors of — providing for borrowing \$— to finance rental housing and related facilities in a rural area for — (Insert: Senior Citizens, Handicapped —, the collection, persons or households of low or moderate income as appropriate), the collection, handling, and disposition of income, the issuance of installment promissory note and real estate security instrument, and related matters.

Whereas — (herein referred to as the "Corporation") is a nonprofit corporation duly organized and operating under — (authorizing State statute).

The Board of Directors of the Corporation (herein referred to as the "board") has decided to provide certain rental housing and related facilities for eligible occupants in rural areas. The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could reasonably be expected to fulfill:

Be It resolved:

1. *Application for Loan:* The Corporation shall apply for and obtain a loan (herein called "the loan") of \$— from the United States of America acting through the Farmers Home Administration, United States Department of Agriculture (herein called "the Government") pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan shall be used solely for the specific eligible purposes for which the loan is approved by the Government, in order to provide rental housing and related facilities for eligible occupants as defined by the Government. Such housing and facilities and the land constituting the site are herein called "the housing."

2. *Execution of Loan Instruments.* To evidence the loan the Corporation shall issue a promissory note (herein referred to as "the note"), signed by its President and attested by its Secretary, with installments over a period of — years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note and any supplemental agreement required by the Government, the President and the Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall require, including an assignment of security interest in the rents and profits as collateral security to be enforceable in the event of any default by the Corporation and containing other terms and conditions prescribed by the Government.

3. *Equal Opportunity and Nondiscrimination Provisions.* The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation: (a) Any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing; (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal Opportunity Agreement" including an FmHA 400-4 entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act 1964), a copy of which is attached hereto and made a part hereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of \$— to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.¹ Funds so deposited with the interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds by the Corporation shall be made only on statements and partial payment estimates signed by the — of the Corporation and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of \$— to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.¹ Amounts in the supervised bank account exceeding \$40,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the obligations. Withdrawals from supervised bank account by the Corporation shall be made only on checks signed by the — of the Corporation and countersigned by the District

Director of the Farmers Home Administration and only for the specific loan purposes approved in writing by the Government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account; an Operation and Maintenance Account; a Debt Service Account; and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Corporation shall, from its own funds or from funds loaned by the Farmers Home Administration for this purpose, deposit in the General Fund Account the amount of \$—. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development (HUD), on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Corporation in trust for the Government as security for the loan obligations.

7. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and

Maintenance Account sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance, and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7 or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Corporation in trust for the Government as security therefor.

9. *Reserve Account.*

(a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and, until so used, shall be held by the Corporation in trust as security for the loan obligations. Transfers at a rate not less than \$_____ annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of \$_____, and shall be resumed at any time when necessary, because of disbursement from the Reserve Account, to restore its said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by the Corporation—

- (1) To meet payments due on the loan obligations in the event the amount in the Debt Service is not sufficient for the purpose.
- (2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.
- (3) To make improvements or extensions to the housing.
- (4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of

the loan or impairing the adequacy of the security, or will strengthen the security or will facilitate, improve, or maintain the orderly collectibility of the loan.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9(a) and is not agreed between the Corporation and the Government to be used for purposes authorized in subsection 9(b) shall be transferred to the General Fund Account unless the Government directs said sum to be retained in the Reserve Account.

10. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Corporation shall—

(a) Impose and collect such fees, assessments, rents and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation, nor merge or consolidate with any other organization, nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not cause or permit the issue or transfer of stock, borrow and money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(e) Submit for the housing the following to the Government for prior review not less than _____ days before the effective dates, and for prior approval by the Government:

- (1) Annual budgets and operating plans.
- (2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.
- (3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing or with any of the Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

11. *Refinancing of Loan.* If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. *General Provisions.*

(a) It is expressly understood and agreed that any loan made will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole and exclusive discretion.

(b) The provisions of this resolution are representations to the Government to induce the Government to make a loan to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provision of this resolution or any requirement made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security, and may enforce all other available remedies.

(c) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone, or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval waiver, or agreement must be in writing.

(e) The resolution may be cited in the security instrument and any other instruments or agreements as the "Loan Resolution of _____ (date of this resolution), 19—.

The undersigned, _____, the Secretary of the Corporation identified in the foregoing loan Resolution, hereby certifies that the

foregoing is a true copy of a resolution of the Board of Directors of the Corporation passed on _____, 19____, which has not been altered, amended, or repealed.

(Date) _____
(Secretary) _____

¹ Only loan funds and borrower's funds to be used for an eligible loan purpose may be deposited in the supervised bank account.

² In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

³ The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

Exhibit K

Loan Resolution of _____, 19____.

(RRH Insured Loan to Profit Type Corporation)

Resolution of the Board of Directors of _____ providing for borrowing \$_____ to finance rental housing and related facilities in a rural area for (insert senior citizens, handicapped persons or households of low or moderate income as appropriate) _____, the collection, handling, and disposition of income, the issuance of installment promissory note and real estate security instrument, and related matters.

Whereas _____ (herein referred to as the "Corporation") is a corporation duly organized and operating under (authorizing State statute) _____; the Board of Directors of the Corporation (herein referred to as the "board") has decided to provide certain rental housing and related facilities for eligible occupants in rural areas;

The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could reasonably be expected to fulfill:

Note.—The word "partner(s)" may be substituted for the word(s) "board" or "Board of Directors" and the word "partnership" may be substituted for the word "corporation" where appropriate. OGC should be requested to provide appropriate substitute language to delete the reference to a "corporate seal" in item 2 and "stockholders" in item 9(b)(5) when required.

Be it resolved:

1. **Application for Loan.** The Corporation shall apply for and obtain a loan (herein called "the loan") of \$_____ through the facilities of the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, (herein called the "Government") pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site are herein called "the housing."

2. **Execution of Loan Instruments.** To evidence the loan the Corporation shall issue

a promissory note (herein referred to as "the note"), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loan, payable in installments over a period of _____ years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, the President and the Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Corporation, and containing other terms and conditions prescribed by the Government. The President and Secretary are further authorized to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Corporation under the note, the related security instrument, and any related agreement are herein called the "loan obligation."

3. **Equal Opportunity and Nondiscrimination Provisions.** The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation: (a) Any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing; (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal Opportunity Agreement" including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds \$10,000 and any part of which is paid for with funds from the loan; and (c) Farmers Home Administration Form FmHA 400-4, entitled "Nondiscrimination Agreement" (Under Title VI, Civil Rights Act of 1964) a copy of which is attached hereto and made a part hereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. **Supervised Bank Account.** In the event that interim financing will be used during the construction period, the amount of \$_____ to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government. Funds so deposited with the interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Corporation shall be made only on statements and partial payment estimates signed by the _____ of the Corporation and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note

and the amount of \$_____ to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government. Amounts in the supervised bank account exceeding \$40,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Corporation shall be made only on checks signed by the _____ of the Corporation and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

5. **Accounts for Housing Operations and Loan Servicing.** The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6. **General Fund Account.** By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, which ever occurs first, the Corporation shall from its own funds deposit in the General Fund Account the amount of \$_____. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the

Corporation in trust for the Government as security for the loan obligation. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Corporation in trust for the Government as security for the loan obligations.

7. Operation and Maintenance Account. Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings, and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings, and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. Debt Service Account. Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 6, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the corporation in trust for the Government as security therefor.

9. Reserve Account. (a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan obligations. Transfers at a rate not less than \$² annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of \$³ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government funds in the Reserve Account may be used by the Corporation—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements for extensions to the housing.

(4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to stockholders or for any other purpose duly authorized by the board: *Provided*, That the board determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 9 (a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9(a) and is not agreed between the Corporation and the Government to be used for the purposes authorized in subsection 9(b) shall be transferred to the general fund account unless the Government directs said sum to be retained in the reserve account.

10. Regulatory Covenants. So long as the loan obligations remain unsatisfied, the Corporation shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation nor merge or consolidate with any other organization, nor

cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not cause or permit the issue or transfer of stock, borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(e) Submit for the housing the following to the Government for prior review not less than _____ days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(4) Rates of compensation to officers and employees of the Corporation payable from or chargeable to any account provided for in this resolution.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

11. Refinancing the Loan. If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. General Provisions.

(a) It is understood and agreed by the Corporation that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this resolution are representations to the Government, to induce the Government, to make or insure a loan to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provision of this resolution or any requirement made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the

entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This resolution may be cited in the security instrument and any other instruments as the "Loan Resolution of (date of this resolution) — 19—."

Certificate

The undersigned, ———, the Secretary of the Corporation identified in the foregoing Loan Resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on ———, 19—, which has not been altered, amended, or repealed.

(Date) ———

(Secretary) ———

(SEAL)

¹ Only loan funds, and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

² In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

³ The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

Exhibit L

Loan Resolution of ———, 19—.

(RRH Insured Loan to Profit Type Corporation Operating on a Limited Profit Basis)

Resolution of the Board of Directors of ——— providing for borrowing \$—— to finance rental housing and related facilities in a rural area for (insert: Senior citizens, handicapped persons or households of low or moderate income as appropriate) ———, the collection, handling, and disposition of income, the issuance of installment promissory note and real estate security instrument, and related matters.

Whereas ——— (herein referred to as the "Corporation") is a corporation duly organized and operating under (authorizing State statute) ———, the Board of Directors of the Corporation (herein referred to as the "board") has decided to provide certain rental housing and related facilities for eligible occupants in rural areas;

The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could

reasonably be expected to fulfill:

Note.—The word "partner(s)" may be substituted for the word(s) "board" or "Board of Directors" and the word "partnership" may be substituted for the word "corporation" where appropriate. OGC should be requested to provide appropriate substitute language to delete the reference to a "corporate seal" in item 2 and "stockholders" in term 9(b)(5) when required. Be it resolved:

1. *Application for loan.* The Corporation shall apply for and obtain a loan (herein called "the loan") of \$—— through the facilities of the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, (herein called the "Government") pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan may be insured by The Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site are herein called "the housing."

2. *Execution of Loan Instruments.* To evidence the loan the Corporation shall issue a promissory note (herein referred to as "the note"), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loan, payable in installments over a period of ——— years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, the President and the Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Corporation, and containing other terms and conditions prescribed by the Government. The President and Secretary are further authorized to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Corporation under the note, the related security instrument, and any related agreement are herein called the "loan obligation."

3. *Equal Opportunity and Nondiscrimination Provisions.* The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing; (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal Opportunity Agreement" including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction

contract the amount of which exceeds \$10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400-4, entitled "Nondiscrimination Agreement" (Under Title VI, Civil Rights Act of 1964) a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of \$—— to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.¹ Funds deposited with the interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Corporation shall be made only on statements and partial payment estimates signed by the ——— of the Corporation and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of \$—— to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.¹ Amounts in the supervised bank account exceeding \$40,000 shall be secured by the depositary bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collateralize the loan obligations. Withdrawals from the supervised bank account by the Corporation shall be made only on checks signed by the ——— of the Corporation and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of

the United States as authorized by section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Corporation shall from its own funds deposit in the General Fund Account the amount of \$—. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan obligation. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Corporation in trust for the Government as security for the loan obligations.

7. *Operation and Maintenance Account.* No later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be

necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Corporation in trust for the Government as security therefor.

9. *Reserve Account.*

(a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan obligations. Transfers at a rate not less than \$—² annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of \$—³ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government funds in the Reserve Account may be used by the Corporation—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements for extensions to the housing.

(4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilities, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to stockholders or for any other purpose duly authorized by the board: *Provided, The board determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 9(a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.*

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9(a) and is not agreed between the Corporation and the Government to be used for the purposes authorized in subsection 9(b) shall be transferred to the general fund account unless the Government directs said sum to be retained in the reserve account.

10. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Corporation shall—

(a) Impose and collect such fee, assessments, rents, and charges that the income of the housing will be sufficient at all

times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) If return on investment for any year exceeds 8 percent per annum of borrower's initial investment of —, the Government may require that the borrower reduce rents the following year and/or refund the excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

(c) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(d) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(e) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation nor merge or consolidate with any other organization, nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not cause or permit the issue or transfer of stock, borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(f) Submit for the housing the following to the Government for prior review not less than — days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(4) Rates of compensation to officers and employees of the Corporation payable from or chargeable to any account provided for in this resolution.

(g) If required by the Government, modify and adjust any matters covered by clause (f) of this section.

(h) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

(i) Not alter, amend, or repeal without the Government's consent this resolution or the

bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan obligations.

(j) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

11. *Refinancing the Loan.* If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. General Provisions.

(a) It is understood and agreed by the Corporation that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this resolution are representations to the Government, to induce the Government, to make or insure a loan to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provision of this resolution or any requirement made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This resolution may be cited in the security instrument and any other instruments as the "Loan Resolution of _____, 19—." (date of this resolution.)

Certificate

The undersigned, _____, the Secretary of the Corporation identified in the foregoing Loan Resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on _____, 19—, which has not been altered, amended, or repealed.

(Date)

(Secretary)

¹ Only loan funds, and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

² In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

³ The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

⁴ The amount to be inserted shall be the borrower's initial investment as calculated in accordance with applicable provisions of Subpart E, Part 1944.

Exhibit M

Loan Agreement (RRH Loan to a Limited Partnership)

1. *Parties and Terms Defined.* This agreement dated _____ of the _____, a Limited Partnership, duly organized and operating under (Authorizing State statute) _____, herein called "Partnership," whose post office address is _____, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Partnership in the amount of \$_____ made or insured, or to be made or insured, by the Government pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site is herein called "the housing." The indebtedness and other obligations of the Partnership under the note evidencing the loan, the related security instrument and related agreement are herein called the "loan obligations."

2. *Execution of Loan Instruments.* To evidence the loan the Partnership shall issue a promissory note signed by the general partner(s) for the amount of the loan, payable in installments over a period of _____ years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement by the Government, the general partner(s) are to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Partnership as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Partnership, and containing other terms and conditions prescribed by the Government. The general partner(s) are to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan.

3. *Equal Opportunity and Nondiscrimination Provisions.* The Partnership will execute (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal

Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds \$10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400-4, entitled "Nondiscrimination Agreement" (Under Title VI, Civil Rights Act of 1964), a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of \$_____ to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.¹ Funds so deposited with interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Partnership shall be made only on statements and partial payment estimates signed by a general partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period/the proceeds of the note and the amount of \$_____ to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.

5. *Accounts for Housing Operations and Loan Servicing.* The Partnership shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9.

¹ Amounts in the supervised bank account exceeding \$40,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collateralize the loan obligations. Withdrawals from the supervised bank account by the Partnership shall be made only on checks signed by a general partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Partnership's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project, when all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

The general partners shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Partnership in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this agreement.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Partnership shall from its own funds deposit in the General Fund Account the amount of \$——. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Partnership may also in its discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Partnership in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Partnership in trust for the Government as security for the loan obligations.

7. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the

Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Partnership in trust for the Government as security therefor.

9. *Reserve Account.*

(a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Partnership in trust as security for the loan obligations. Transfers at a rate not less than \$——² annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of \$——³ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government, funds in the Reserve Account may be used by the Partnership—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements for extensions to the housing.

(4) For other purposes desired by the Partnership which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to the partners or for any other purpose desired by the Partnership: *Provided*, The Partnership determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 9(a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9(a) and is not agreed between the Partnership and the Government to be used for the purposes authorized in subsection 9(b) shall be transferred to the General Fund Account unless the Government directs said sum to be retained in the Reserve Account.

10. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Partnership shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Agree that if any provisions of its organizational documents or any verbal understandings conflict with the terms of this loan agreement, the terms of the loan agreement shall prevail and govern.

(e) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not change the membership by either the admission or withdrawal of any partner(s) nor permit the general partner(s) to maintain less than a 5 percent financial interest in the organization nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(f) Submit for the housing the following to the Government for prior review not less than —— days before the effective dates, and for prior approval by the Government.

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(4) Rates of compensation to officers and employees of the Partnership payable from or chargeable to any account provided for in this agreement.

(g) If required by the Government, modify and adjust any matters covered by clause (f) of this section.

(h) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Partnership in connection with the loan.

(i) Not alter, amend, or repeal without the Government's consent this agreement or the Partnership Agreement, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligation.

(j) Do other things as may be required by the Government in connection with the

operations of the housing, or with any of the Partnership's operations or affairs which may affect the housing, the loan obligations, or the security.

11. *Refinancing the Loan.* If at any time it appears to the Government that the Partnership is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, the Partnership will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. *General Provisions.*

(a) It is understood and agreed by the Partnership that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this agreement are representations to the Government, to induce the Government, to make or insure a loan to the Partnership as aforesaid. If the Partnership should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully ad default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Partnership, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This agreement may be cited in the security instrument and any other instruments as the "Loan Agreement" of (date of this agreement) —, 19—.

Partnership Name

By:

¹ Only loan funds, and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

² In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

³ The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

Exhibit N

Loan Agreement (RRH Loan to a Limited Partnership Operating on a Limited Profit Basis)

1. *Parties and Terms Defined.* This agreement dated — of the —, a Limited Partnership, duly organized and operating under (Authorizing State Statute) — herein called "Partnership," whose post office address is —,

with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Partnership in the amount of \$ — made or insured, or to be made or insured, by the Government pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site is herein called "the housing." The indebtedness and other obligations of the Partnership under the note evidencing the loan, the related security instrument and related agreement are herein called the "loan obligations."

2. *Execution of Loan Instruments.* To evidence the loan, the Partnership shall issue a promissory note signed by general partner(s) for the amount of the loan, payable in installments over a period of — years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement by the Government, the general partner(s) are to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Partnership as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Partnership, and containing other terms and conditions prescribed by the Government. The general partner(s) are to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan.

3. *Equal Opportunity and Nondiscrimination Provisions.* The Partnership will execute (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds \$10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400-4, entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of \$ — to be contributed by the Partnership from its own funds, and used for eligible loan purposes, shall be deposited with the interim lender prior to the start of construction as required by the Government.¹ Funds so

deposited with the interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Partnership shall be made only on statements and partial payment estimates signed by a general partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of \$ — to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.¹ Amounts of the Government loan in the supervised bank account exceeding \$40,000 shall be secured by the depository bank advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Partnership shall be made only on checks signed by a general partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the government. The Partnership's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with the Government loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Partnership shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, and Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. The general partner(s) shall execute a fidelity bond with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the government. The Partnership in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this agreement.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the

necessity for multiple advances of Farmers Home Administration loan funds whichever occurs first, the Partnership shall from its own funds deposit in the General Fund Account the amount of \$——. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Partnership may also in its discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and until so used shall be held by the Partnership in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Partnership in trust for the Government as security for the loan obligations.

7. Operation and Maintenance Account. Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Partnership to pay from the Operation and Maintenance Account the actual, reasonable and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payments of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund account which are not proceeds of the loan or income or revenue from the housing.

8. Debt Service Account. Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan: Funds in the Debt Service Account shall be held by the Partnership in trust for the Government as security therefor.

9. Reserve Account.

(a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this agreement and until so used shall be held by the Partnership in trust as security for the loan obligations. Transfers at a rate not less than \$——² annually shall be made to the Reserve Account until the amount in the Reserve

Account reaches the sum of \$——³ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by the Partnership—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by the Partnership which in the judgement of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to the partners of up to 8% per annum of the borrowers initial investment of \$——⁴ provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 9(a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will be likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9(a) and is not agreed between the Partnership and the Government to be used for purposes authorized in subsection 9(b) shall be transferred to the General Fund Account unless the Government directs said sum be retained in the Reserve Account.

10. Regulatory Covenants. So long as the loan obligations remain unsatisfied, the Partnership shall—

(a) Impose and collect such fees, assessments, rents, and charges the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) If return on investment for any year exceeds 8 percent per annum of borrower's initial investment of \$——⁴, the Government may require that the borrower reduce rents the following year and/or refund the excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

(c) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnished the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(d) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover the handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(e) Agree that if any provisions of its organization documents or any verbal understandings conflict with the terms of this loan agreement, the terms of the loan agreement shall prevail and govern.

(f) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not change the membership by either the admission or withdrawal of any partner(s) nor permit the general partner(s) to maintain less than a 5 percent financial interest in the organization nor cause or permit voluntary dissolution of the Partnership nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(g) Submit for the housing the following to the Government for prior review not less than —— days before the effective dates, and for prior approval by the Government—

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(4) Rates of compensation to officers and employees of the Partnership payable from, or chargeable to, any account provided for in this agreement.

(h) If required by the Government, modify and adjust any matters covered by clause (g) of this section.

(i) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Partnership in connection with the loan.

(j) Not alter, amend, or repeal without the Government's consent this agreement or the Partnership agreement, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligation.

(k) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Partnership's operations or affairs which may affect the housing, the loan obligation, or the security.

(11) *Refinancing the loan.* If at any time it appears to the Government that the

Partnership is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government the Partnership will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

(12) *General Provisions.* (a) It is understood and agreed by the Partnership that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this agreement are representations to the Government to induce the Government to make or insure a loan to the Partnership as aforesaid. If the Partnership should fail to comply with or perform any provision of the agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provision of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Partnership, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver or agreement must be in writing.

(e) This agreement may be cited in the security instrument and any other instruments as the "Loan Agreement of (date of this agreement) — 19—.

Partnership Name

By:

¹ Only loan funds and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

² In most case figures should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

³ The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

⁴ The amount to be inserted shall be the borrower's initial investment as calculated in accordance with applicable provisions of Subpart E of Part 1944.

Exhibit O.—Loan Agreement (RRH Loan to a Partnership)

1. *Parties and Terms Defined.* This agreement dated _____ of the _____, a Partnership, duly organized and operating under (Authorizing State statute) _____, herein called "Partnership," whose post office address is _____, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a

loan, herein called "the loan," to Partnership in the amount of \$_____ made or insured, or to be made or insured, by the Government pursuant to sections 515 (b) and 521 (a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing." The indebtedness and other obligations of the Partnership under the note evidencing the loan, the related security instrument and related agreement are herein called the "loan obligations."

2. *Execution of Loan Instruments.* To evidence the loan the Partnership shall issue a promissory note signed by all partners for the amount of the loan, payable in installments over a period of _____ years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, all Partners are to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Partnership as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Partnership, and containing other terms and conditions prescribed by the Government. All partners are to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan.

3. *Equal Opportunity and Nondiscrimination Provisions.* The Partnership will execute (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds \$10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400-4, entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of \$_____ to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.¹ Funds so deposited with the interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Partnership

shall be made only on statements and partial payment estimates signed by a partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period the proceeds of the note and the amount of \$_____ to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.¹ Amounts in the supervised bank account exceeding \$40,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Partnership shall be made only on checks signed by a partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Partnership's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Partnership shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. One or more general partners shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Partnership in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this agreement.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Partnership shall from its own funds deposit in the General Fund Account the amount of \$_____. All income and revenue from the housing shall, upon receipt, be immediately deposited in the

General Fund Account. The Partnership may also in its discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in section 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Partnership in trust for the Government as security for the loan obligation. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Partnership in trust for the Government as security for the loan obligations.

7. Operation and Maintenance Account. Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Partnership to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. Debt Service Account. Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Partnership in trust for the Government as security therefor.

9. Reserve Account.

(a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this agreement and until so used shall be held by the Partnership in trust as security for the loan obligations. Transfers at a rate not less than \$_____ annually shall be made to the Reserve Account until the amount in the Reserve account reaches the sum of \$_____ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited

in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government funds in the Reserve Account may be used by the Partnership—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements for extensions to the housing.

(4) For other purposes desired by the Partnership which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to partners or for any other purpose desired by the Partnership, provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 9 (a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9 (a) and is not agreed between the Partnership and the Government to be used for the purposes authorized in subsection 9 (b) shall be transferred to the general fund account unless the Government directs said sum be retained in the Reserve Account.

10. Regulatory Covenants. So long as the loan obligations remain unsatisfied, the Partnership shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Agree that if any provisions of its organizational documents or any verbal

understandings conflict with the terms of this loan agreement, the terms of the loan agreement shall prevail and govern.

(e) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not change the membership by either the admission or withdrawal of partners nor cause or permit voluntary dissolution of the Partnership nor cause or permit any transfer or encumbrance of title to the housing, or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(f) Submit for the housing the following to the Government for prior review not less than _____ days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(4) Rates of compensation to officers and employees of the Partnership payable from or chargeable to any account provided for in this agreement.

(g) If required by the Government, modify and adjust any matters covered by clause (f) of this section.

(h) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Partnership in connection with the loan.

(i) Not alter, amend, or repeal without the Government's consent this agreement or the Partnership Agreement of the Partnership, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligations.

(j) Do other things as may be required by the Government in connection with the operations or affairs which may affect the housing, the loan obligation, or the security.

11. Refinancing the Loan. If at any time it appears to the Government that the Partnership is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, the Partnership will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. General Provisions.

(a) It is understood and agreed by the Partnership that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this agreement are representations to the Government, to induce

the Government, to make or insure a loan to the Partnership as aforesaid. If the Partnership should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Partnership, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This agreement may be cited in the security instrument and any other instruments as the "Loan Agreement of (date of this agreement) _____, 19____, Partnership name _____ By: _____"

Loan Agreement (RRH Loan to a Partnership Operating on a Limited Profit Basis)

1. *Parties and Terms Defined.* This agreement dated _____ of the _____, a Partnership, duly organized and operating under (Authorizing State statute) _____ herein called "Partnership," whose post office address is _____, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Partnership in the amount of \$_____ made or insured, or to be made or insured, by the Government pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing." The indebtedness and other obligations of the Partnership under the note evidencing the loan, the related security instrument and related agreement are herein called the "loan obligations."

2. *Execution of Loan Instruments.* To evidence the loan the Partnership shall issue a promissory note (herein referred to as "the note"), signed by all partners for the amount of the loan, payable in installments over a period of _____ years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other

agreement required by the Government, all partners are to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Partnership as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the partnership, and containing other terms and conditions prescribed by the Government. All partners are to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Partnership under the note, the related security instrument, and any related agreement are herein called the "loan obligation."

¹ Only loan funds, and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

² In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

³ The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

3. *Equal Opportunity and Nondiscrimination Provisions.* The Partnership will execute (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds \$10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400-4, entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of \$_____ to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.¹ Funds so deposited with the interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Partnership shall be made only on statements and partial payment estimates signed by the partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of \$_____ to be contributed by the Partnership from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.¹ Amounts in the supervised bank account

exceeding \$40,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Partnership shall be made only on checks signed by a partner and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Partnership's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Partnership shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. One or more of the partners shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Partnership in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this agreement.

6. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, which ever occurs first, the Partnership shall from its own funds deposit in the General Fund Account the amount of \$_____. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the

project and shall be held by the Partnership in trust for the Government as security for the loan obligations.

7. Operation and Maintenance Account.

Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Partnership to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. Debt Service Account. Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Partnership in trust for the Government as security therefor.

9. Reserve Account.

(a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this agreement and until so used shall be held by the Partnership in trust as security for the loan obligations. Transfers at a rate not less than \$_____² annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of \$_____³ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government funds in the Reserve Account may be used by the Partnership—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-

range depreciation which are not current expenses under section 7.

(3) To make improvements for extensions to the housing.

(4) For other purposes desired by the Partnership which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to the partners of up to 8 percent per annum of the borrower's initial investment of \$_____, provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 9(a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 9(a) and is not agreed between the Partnership and the Government to be used for the purposes authorized in subsection 9(b) shall be transferred to the general fund account unless the Government directs said sum to be retained in the Reserve Account.

10. Regulatory Covenants. So long as the loan obligations remain unsatisfied, the Partnership shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) If return on investment for any year exceeds 8 percent per annum of borrower's initial investment of \$_____,⁴ the Government may require that the borrower reduce rents the following year and/or refund the excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

(c) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(d) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(e) Agree that if any provisions of its organizational documents or any verbal understandings conflict with the terms of this loan agreement, the terms of the loan agreement shall prevail and govern.

(f) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not change the membership by either the admission or withdrawal of any partner(s) nor permit the general partner(s) to maintain less than a 5 percent financial interest in the organization or permit voluntary dissolution of the Partnership nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(g) Submit for the housing the following to the Government for prior review not less than _____ days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements with occupants and compensation to employees of the housing project.

(4) Rates of compensation to officers and employees of the Partnership payable from or chargeable to any account provided for in this agreement.

(h) If required by the Government, modify and adjust any matters covered by clause (g) of this section.

(i) Comply with all its agreements and obligations in or under the note, security instruments, and any related agreement executed by the Partnership in connection with the loan.

(j) Not alter, amend, or repeal without the Government's consent this agreement or the Partnership Agreement, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligations.

(k) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Partnership's operations or affairs which may affect the housing, the loan obligations, or the security.

11. Refinancing the Loan. If at any time it appears to the Government that the Partnership is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, the Partnership will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. General Provisions. (a) It is understood and agreed by the Partnership that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this agreement are representations to the Government, to induce the Government, to make or insure a loan to the Partnership as aforesaid. If the

Partnership should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Partnership, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This agreement may be cited in the Security instrument and any other instruments as the "Loan Agreement of (date of this agreement) _____, 19____, Partnership Name _____ By: _____"

¹ Only loan funds and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

² In most case figures should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

³ The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

⁴ The amount to be inserted shall be the borrower's initial investment as calculated in accordance with applicable provisions of Subpart E of Part 1944.

Exhibit Q

Loan Agreement—(RRH Insured Loan to Individual)

1. *Parties and Terms Defined.* This agreement dated _____ of the Undersigned _____, herein called "Borrower" whether one or more, whose post office address is _____, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Borrower in the amount of \$_____ made or insured, or to be made or insured, by the Government pursuant to sections 515(b) and 521(a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing." The indebtedness and other obligations of Borrower under the note evidencing the loan,

the related security instrument and any related agreement are herein called the "loan obligations."

2. *Equal Opportunity and Nondiscrimination Provisions.* The Borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds \$10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400-4, entitled "Nondiscrimination Agreement" (Under Title VI, Civil Rights Act of 1964), a copy of which is attached hereto and made a part thereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

3. *Supervised Bank Account.* In the event that interim financing will be used during the construction period, the amount of \$_____ to be contributed from the Borrower's own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.¹ Funds so deposited with interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Borrower's withdrawals of either the deposited funds or the interim loan funds shall be made only on statements and partial payment estimates signed by the Borrower and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of \$_____ to be contributed from the Borrower's own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government.² Amounts in the supervised bank account exceeding \$40,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 178. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Borrower shall be made only on checks signed by the Borrower and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Borrower's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

4. *Accounts for Housing Operations and Loan Servicing.* Borrower shall establish on the Borrower's books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Funds Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 8(a).

5. *General Fund Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Borrower shall from the Borrower's own funds deposit in the General Fund Account the amount of \$_____. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Borrower may also in the Borrower's discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in sections 6, 7, or 8. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by Borrower in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD), on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Borrower in trust for the Government as security for the loan obligations.

6. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Borrower to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

7. *Debt Service Account.* each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt

Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Borrower in trust for the Government as security therefor.

8. *Reserve Account.* (a) Immediately after each transfer to the Debt Service Account as provided in section 7, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this agreement and until so used shall be held by the Borrower in trust as security for the loan obligations. Transfers at a rate not less than \$_____ annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of \$_____ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government, funds in the Reserve Account may be used by the Borrower—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 6.

(3) To make improvements for extensions to the housing.

(4) For other purposes desired by the Borrower which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) For any purpose desired by the Borrower, provided the Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 8 (a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 8 (a) and is not agreed between the Borrower and the Government to be used for the purposes authorized in subsection 8 (b) shall be transferred to the general fund account unless the Government directs said sum to be retained in the Reserve Account.

9. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Borrower shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations,

and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(e) Submit for the housing the following to the Government for prior review not less than _____ days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans, including proposed rents and charges and other terms of rental agreements with occupants, and compensation to employees chargeable as operating expenses to employees of the housing project.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Borrower's operations or affairs which may affect the housing, the loan obligations, or the security.

10. *Refinancing the Loan.* If at any time it appears to the Government that the Borrower is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the government, the borrower will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

11. *General Provisions.*

(a) It is understood and agreed by the Borrower that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) Borrower shall also comply with all covenants and agreements set forth in the note, security instrument, and any related agreements executed by Borrower in connection with the loan.

(c) The provisions of this agreement are representations to the Government, to induce the Government, to make or insure a loan to the Borrower as aforesaid. If the Borrower should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(d) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the government and the Borrower, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form by the Government initially.

(e) Any notice, consent, approval, waiver or agreement must be in writing.

(f) This resolution may be cited in the security instruments and any other instrument as the "Loan Agreement" of _____, 19____.

(date of this agreement)

Partnership name

Witness

Borrower

Witness

Borrower

¹ Only loan funds, and borrower's funds to be used for eligible loan purposes, may be deposited in the Supervised bank account.

² In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

³ The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

Loan Agreement (RRH Loan to an Individual Operating on a Limited Profit Basis)

1. *Parties and Terms Defined.* This agreement dated _____ of the Undersigned _____, herein called "Borrower" whether one or more, whose post office address is _____, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Borrower in

the amount of \$—— made or insured, or to be made or insured, by the Government pursuant to sections 515 (b) and 521 (a) of the Housing Act of 1949. The loan may be insured by the Government for the benefit of the lender. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing." The indebtedness and other obligations of the Borrower under the note evidencing the loan, the related security instrument and any related agreement are herein called the "loan obligations."

2. Equal Opportunity and Nondiscrimination Provisions. The Borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400-1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds \$10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400-4, entitled "Nondiscrimination Agreement" (Under Title VI, Civil Rights Act of 1964), a copy of which is attached thereto and made a part hereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

3. Supervised Bank Account. In the event that interim financing will be used during the construction period, the amount of \$—— to be contributed by the Borrower from the Borrower's own funds and used for eligible loan purposes shall be deposited with the interim lender prior to the start of construction as required by the Government.¹ Funds so deposited with interim lender must be disbursed for eligible loan purposes prior to the disbursement of any interim loan funds. Withdrawals of either the deposited funds or the interim loan funds by the Borrower shall be made only on statements and partial payment estimates signed by the Borrower and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. In the event that multiple advances of Farmers Home Administration loan funds will be used during the construction period, the proceeds of the note and the amount of \$—— to be contributed from the Borrower's own funds and used for eligible loan purposes shall be deposited in a "Supervised bank account" as required by the Government.¹ Amounts in the supervised bank account exceeding \$40,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Borrower shall be made

only on checks signed by the Borrower and countersigned by the District Director of the Farmers Home Administration, and only for the specific loan purposes approved in writing by the Government. The Borrower's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in a supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of the Farmers Home Administration, and the supervised bank account shall be closed.

4. Accounts for Housing Operations and Loan Servicing. Borrower shall establish on the Borrower's books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Funds Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 8 (a).

5. General Fund Account. By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Borrower shall from the Borrower's own funds deposit in the General Fund Account the amount of \$——. All income and revenue from the housing shall, upon receipt, be immediately deposited in the General Fund Account. The Borrower may also in the borrower's discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in sections 6, 7 or 8. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by Borrower in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development, (HUD), on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Borrower in trust for the Government as security for the loan obligations.

6. Operation and Maintenance Account. Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable the Borrower to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance and normal repair and replacement of furnishings

and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

7. Debt Service Account. Each month, immediately after the transfer to the Operation and Maintenance account provided for in section 6, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Borrower in trust for the Government as security therefor.

8. Reserve Account.

(a) Immediately after each transfer to the Debt Service Account as provided in section 7, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan obligations. Transfers at a rate not less than \$——² annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of \$——³ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With prior consent of the Government, funds in the Reserve Account may be used by the Borrower—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 6.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by the Borrower which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) To pay dividends to the Borrower of up to 8 percent per annum of the Borrower's initial investment of \$——⁴ provided the Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 8 (a) to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not

fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 8 (a) and is not agreed between the Borrower and the Government to be used for the purposes authorized in subsection 8 (b) shall be transferred to the general fund account unless the Government directs said sum to be retained in the Reserve Account.

9. *Regulatory Convenants.* So long as the loan obligations remain unsatisfied, the Borrower shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) If return on investment for any year exceeds 8 percent per annum of Borrower's initial investment of \$_____,⁴ the Government may require that the Borrower reduce rents the following year and/or refund the excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

(c) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(d) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(e) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 6 which would have a detrimental effect on the housing.

(f) Submit for the housing the following to the Government for prior review not less than ____ days before the effective dates, and for prior approval by the Government:

(1) Annual budgets and operating plans, including proposed rents and charges and other terms of rental agreements with occupants, and compensation to employees chargeable as operating expenses to employees of the housing project.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(g) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(h) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Borrower's operations or affairs which may affect the housing, the loan obligations, or the security.

10. *Refinancing the Loan.* If at any time it appears to the Government that the Borrower is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, the Borrower will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

11. *General Provisions.*

(a) It is understood and agreed by the Borrower that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) Borrower shall also comply with all covenants and agreements set forth in the note, security instrument, and any related agreements executed by Borrower in connection with the loan.

(c) The provisions of this resolution are representations to the Government, to induce the Government, to make or insure a loan to the Borrower as aforesaid. If the Borrower should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(d) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Borrower, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(e) This agreement may be cited in the security instrument and any other instrument as the Loan Agreement of

_____, 19_____
(date of this agreement)

Borrower

¹ Only loan funds and Borrower's funds to be used for eligible loan purposes may be deposited in the supervised bank account.

² In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 4.

³ The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

⁴ The amount to be inserted shall be the borrower's initial investment as calculated in accordance with applicable provisions of Subpart E of Part 1944.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1901-G "Environmental Impact Statements". It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190 an Environmental Impact Statement is not required.

This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria and is being published under emergency procedures, as authorized by Executive Order 12044 and Secretary's Memorandum No. 1955, without a full 60-day comment period. It has been determined by Mr. L. D. Elwell, Assistant Administrator, Multiple Family Housing, that an emergency situation exists which warrants less than a full 60-day comment period on this proposal. This action is taken in reply to findings and recommendations of the USDA Office of Inspector General which require that certain changes be made to the rural rental housing instruction as soon as possible in order to better protect the integrity of the program and to provide verification of proper use of federal funds more effectively to meet the needs of the primary beneficiaries of the program. In addition, due to a reorganization of the Agency field staff, authorities must be made official to the individuals responsible for loan processing and review.

Dated: November 23, 1979.

Gordon Cavanaugh,
Administrator, Farmers Home
Administration.

[FR Doc. 79-36767 Filed 11-29-79; 6:45 am]

BILLING CODE 3410-07-M

Federal Register

Friday
November 30, 1979

Part VI

Department of the Interior

Fish and Wildlife Service

**Listing of Virginia and Ozark Big-Eared
Bats as Endangered Species, and Critical
Habitat Determination; Final Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing of Virginia and Ozark Big-Eared Bats as Endangered Species, and Critical Habitat Determination

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Virginia big-eared bat (*Plecotus townsendii virginianus*) and the Ozark big-eared bat (*Plecotus townsendii ingens*) to be Endangered species, and determines five caves in West Virginia to be Critical Habitat for the Virginia big-eared bat. These bats have declined seriously in recent years, mainly because of human disturbance of their caves. This rule will extend to these bats the protection provided by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:**Background**

On October 15, 1976, the Service was petitioned by Dr. John S. Hall (Professor of Biology, Albright College, Reading, Pennsylvania 19603) and Dr. Michael J. Harvey (Professor of Biology, Ecological Research Center, Memphis State University, Memphis, Tennessee 38152) to list the Virginia and Ozark big-eared bats as Endangered.

On the basis of that petition, and information subsequently received from the petitioners, regional offices of the Service, and other sources, the Virginia and Ozark big-eared bats were proposed for listing as Endangered on December 2, 1977 (42 FR 61290-61292). That proposal included designation of five caves in West Virginia and one in Kentucky as Critical Habitat for the Virginia big-eared bat but none for the Ozark big-eared bat. Before final action could be taken on the proposal, however, Congress passed the Endangered Species Act Amendments of 1978, which substantially modified the procedures the Service must follow when designating Critical Habitat. In order to bring the Critical Habitat part

of the proposal into conformity with the Amendments, the Service repropoed Critical Habitat for the Virginia big-eared bat on August 30, 1979 (44 FR 51144-51145).

The reproposal of critical habitat provided for a public comment period extending until November 1, 1979. In addition, the Endangered Species Act requires that the Governor be allowed 90 days in which to respond to the proposal, unless he agrees to a shorter period. At the request of the Service, in order to facilitate issuance of the final rule prior to the deadline of December 2, 1979, now imposed by the Endangered Species Act, the Governor of West Virginia kindly agreed to waive the 90 day requirement, and provided a favorable response on October 23, 1979.

Summary of Comments and Recommendations

A total of 25 written comments was received in response to the original proposal of December 2, 1977. Of the responses, none flatly opposed the proposal, and 21 indicated support. The supporting respondents included the Governor of Oklahoma, Governor of Arkansas, Director of the Missouri Department of Conservation, Director of the Illinois Department of Conservation, Commissioner of the Kentucky Department of Natural Resources, Governor of West Virginia, Associate Deputy Chief of the U.S. Forest Service, Administrator of the U.S. Soil Conservation Service, and Chairman of the Chiroptera Group of the Survival Services Commission of the International Union for Conservation of Nature and Natural Resources.

Officials of the Departments of Natural Resources of Indiana, Ohio, and Maryland observed that the proposal of December 2, 1977, had included their States within the known distribution of the Virginia big-eared bat, when in fact there were no specific records of the species from these States. The Service was aware of the lack of records, but considered it advisable to mention the three States because of their proximity and the possibility that the species could occasionally appear therein. In this final rule the three States have been deleted from the known distribution, but the Service emphasizes that should a Virginia big-eared bat be found in Indiana, Ohio, or Maryland, it would be protected by the Endangered Species Act of 1973.

The Director of the Missouri Department of Conservation, and other respondents, suggested the designation of Critical Habitat for the Ozark as well as the Virginia big-eared bat. Although the Service did not subsequently

propose Critical Habitat for this species for the reasons set out below, it requests additional pertinent data and will designate Critical Habitat later if the evidence warrants. In a letter dated January 3, 1978, the Commissioner of the Kentucky Department of Fish and Wildlife Resources, while supporting the listing of the Virginia big-eared bat, suggested that it would be advisable not to designate Stillhouse Cave in Lee County, Kentucky as Critical Habitat. This suggestion was based on the view that designating that cave as Critical Habitat would call attention to it, resulting in increased public use and disturbances to the bats. The Commission also noted that the present owners of the cave were insuring protection of the bats. The Service agreed with this suggestion and did not include Stillhouse Cave in the reproposal of Critical Habitat.

In response to the reproposal of Critical Habitat of August 30, 1979, there were 13 written comments and one statement at a public hearing held by the Service in Elkins, West Virginia on October 11, 1979. The 12 supporting respondents included the Governor of West Virginia and several biologists and speleologists, some of whom provided valuable data and suggestions for additional Critical Habitat or protective measures. The Director of the Kentucky Nature Preserves Commission, and two other persons, advocated that Stillhouse Cave in Lee County, Kentucky, which had been dropped from the reproposal, be designated as Critical Habitat. The Kentucky Nature Preserves Commission also suggested that other caves within the Cave Hollow System in Lee County, Kentucky be designated as Critical Habitat. The Service will review the data and propose further Critical Habitat within the near future, if the evidence warrants. In the meantime, the Service is unaware of any impending activity that would be detrimental to Stillhouse Cave and there is no indication that there will be any disadvantage to the bats therein because a Critical Habitat designation is not now being made.

Mr. Fred C. Western, Vice President of the Germany Valley Limestone Company, which has a quarrying operation in the vicinity of Hellhole Cave in Pendleton County, West Virginia, expressed opposition to the designation of this cave as Critical Habitat. Mr. Western's reason was that such designation could have a long term effect on the quarrying operation, but he also stated that the operation was not detrimental to the bats and that future expansion of the quarry would occur

away from the cave. A subsequent meeting between Mr. Western and Service personnel indicated that there apparently had been a misunderstanding regarding the meaning of a Critical habitat designation, that there was no known conflict between the quarrying operation and the interests of the bats, and that any future problems could be easily resolved. The Service also notes that Hellhole Cave has already been designated Critical Habitat for the Indiana bat, another Endangered species, and the requirements of both species are equivalent.

Conclusion

After review and consideration of all available information, the Service has determined that the Virginia big-eared bat (*Plecotus townsendii virginianus*) and the Ozark big-eared bat (*Plecotus townsendii ingens*) are endangered species as defined by the Endangered Species Act of 1973. Section 4(a) of the Act states that the Secretary of the Interior shall determine a species to be Endangered or Threatened because of any of five factors. These factors, and their application to the Virginia and Ozark big-eared bats, are listed below.

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Both of these bats long have been restricted to relatively small areas, and are dependent on a few specific kinds of caves for hibernation and reproductive activity. Both are highly intolerant of human presence, and will readily abandon their roosts when disturbed.

The Virginia big-eared bat still is found in three separate populations, centered in eastern Kentucky, southwestern Virginia, and eastern West Virginia, but many caves within this region have been abandoned. In the last 18 years at least five wintering colonies have disappeared in West Virginia. Only three nursery colony caves are known to remain in this State, and numbers therein have declined considerably because of repeated disturbance by spelunkers and vandals. There are still about 2,500 to 3,000 bats in West Virginia, but their dependence on the few remaining nursery caves makes the entire population subject to rapid extermination under the wrong conditions. A serious decline also has occurred in the single known nursery colony in Kentucky, which now contains fewer than 500 bats. In the Virginia population not more than a few hundred individuals survive.

The Ozark big-eared bat is in an even worse situation. It is now found in only a few caves in northwestern Arkansas,

southwestern Missouri, and eastern Oklahoma. Recent estimates indicate that the total surviving population numbers only about 100 to 200 individuals. The declining status of this bat has been recognized by State conservation biologists, Academicians, and spelunkers.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Some of these bats have been killed for fun. In addition, well-meaning biologists and spelunkers, observing the bats for scientific or educational purposes, have caused disturbances and subsequent population reductions because of the high sensitivity of these species.

3. *Disease or predation.* Not known to be applicable.

4. *The inadequacy of existing regulatory mechanisms.* These bats and their habitat are not currently under protection of Federal laws. State protective laws have not been successful in preventing the decline of these species.

5. *Other natural or manmade factors affecting its continued existence.*

None in addition to those discussed above.

Critical Habitat

Subsection 4(a)(1) of the Act states:

At the time any such regulation (to determine a species to be Endangered or Threatened) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

As explained above in the Summary of Comments, the Service is not now designating one of the originally proposed Critical Habitat sites for the Virginia big-eared bat. Designation of Stillhouse cave would call public attention to it, resulting in increased public use and disturbances of the bats. The present owners of this cave have also acted to protect the bats.

The Service also believes that it would not be prudent to specify any Critical Habitat for the Ozark big-eared bat at this time. Critical Habitat was not specified for this bat either in this original proposal of December 2, 1977 or the reproposal of August 30, 1979. This bat is exceptionally rare and the few survivors are not known to make periodic use of any particular cave for hibernation or maternity purposes, appearing at entirely different sites in subsequent years. As a result, designation of any particular area may not have been beneficial to this species. However, the Service will continue to review the scientific evidence and will

propose Critical Habitat in the future if warranted.

The Act defines Critical Habitat as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Service has concluded that five caves in West Virginia should be designated as Critical Habitat for the Virginia big-eared bat. Because of precise conditions of physical structure, temperature, and humidity, these caves are suitable for use by the species as sites for hibernation and reproduction. The species has a limited range and is highly susceptible to changes in its habitat. Even minor disturbance or physical changes in the caves occupied may result in extinction. Therefore, these caves are essential for its conservation. The physical and biological features of its habitat are such as to require special management considerations and protection.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis which has been used as the basis for a decision that economic and other impacts of this action are insignificant for the foreseeable future.

Effect of the Rulemaking

All prohibitions of 50 CFR 17.21 would apply to the Virginia and Ozark big-eared bats. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import, or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce these species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies. Permits for scientific purposes or for the enhancement of propagation or survival would be available in accordance with 50 CFR 17.22. Economic hardship permits would be available under 50 CFR 17.23.

Section 7(a) of the Act provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of section 7 of the Endangered Species Act Amendments of 1978.

Provisions for Interagency Cooperation were published in the Federal Register on January 4, 1978 (43 FR 870-876), and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. The rule now being issued requires Federal agencies to satisfy these statutory and regulatory obligations with respect to the Virginia and Ozark big-eared bats. These agencies now are required not only to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of these species, but also to insure that their actions do not result in the destruction or adverse

modification of the habitat that has been determined by the Secretary to be critical.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any final regulation specifying Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Director, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for the Virginia big-eared bat.

1. Any action which would substantially alter the physical structure, temperature, humidity, or air flow of the designated caves could adversely modify Critical Habitat, since the Virginia big-eared bat depends on the maintenance of precise conditions in these caves which it must use for hibernating sites in the winter and for nurseries in the summer.

2. Any action which would result in disturbance of the bats in their hibernating or nursery caves would adversely affect Critical Habitat since the species is highly intolerant of human disturbance. Such activity might include blasting or construction in or near the designated caves, or increasing human access to the caves.

Effect Internationally

The Service will review the status of the Virginia and Ozark big-eared bats to determine whether they should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and

Flora for placement upon the appropriate appendix to that Convention, and whether they should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, or other appropriate international agreements.

National Environmental Policy Act

A final environmental assessment has been prepared and is on file in the Service's Office of Endangered Species. This assessment is the basis for a decision that this rule is not a major Federal action that significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240. (703/235-1975).

Note.—The Department of the Interior has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Act 12044 and 43 CFR Part 14.

Regulation Promulgation

Accordingly, Part 17, Subparts B and I, Title 50 of the Code of Federal Regulations are amended as set forth below:

1. Section 17.11 is amended by adding, in alphabetical order, the following to the List of Endangered and Threatened Wildlife:

Species	Range	Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion endangered
Mammals:				
Bat, Ozark big-eared.....	<i>Plecotus townsendii ingens</i>	NA	USA (Arkansas, Missouri, Oklahoma, Iowa, Illinois, Kentucky, West Virginia, Virginia,.....)	E
Bat, Virginia big-eared.....	<i>Plecotus townsendii virginianus</i>	NA	USA (Illinois, Kentucky, West Virginia, Virginia,.....)	E

2. Section 17.95(a) is amended by adding the following Critical Habitat description after the Critical Habitat description for the Indiana bat:

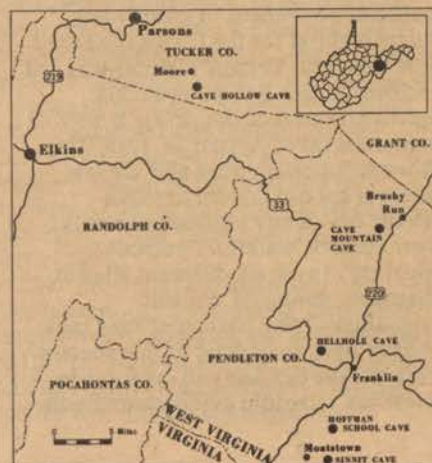
§ 17.95 Critical habitat—Fish and wildlife.

(a) Mammals.

Virginia Big-eared Bat (*Plecotus townsendii virginianus*)

West Virginia. Cave Mountain Cave, Hellhole Cave, Hoffman School Cave, and Sinnit Cave, each in Pendleton County; Cave Hollow Cave, Tucker County.

VIRGINIA BIG-EARED BAT Pendleton and Tucker Counties, WEST VIRGINIA



Dated: November 26, 1979.

Robert E. Gilmore,
Acting Director, Fish and Wildlife Service.
[FR Doc. 79-36821 Filed 11-29-79; 8:45 am]
BILLING CODE 4310-55-M